

Introduced by

1 A BILL for an Act to create and enact a new chapter to title 54 of the North Dakota Century
2 Code, relating to creation of a department of commerce; to amend and reenact sections
3 4-14.1-03, 4-14.1-04, and 6-12-02, subsection 6 of section 10-30-04, subsection 4 of section
4 10-30.5-02, section 10-30.5-05, subsection 6 of section 10-30.6-04, section 14-02.4-21,
5 subsection 3 of section 20.1-02-17.1, sections 20.1-02-18.1, 21-11-02, 21-11-03, 21-11-04,
6 21-11-05, 21-11-06, and 24-03-21, subsection 4 of section 26.1-50-01, sections 26.1-50-02,
7 28-32-01, 34-05-01, 34-05-01.1, 34-05-01.2, 34-05-01.3, 34-05-01.4, 34-05-03, 34-05-04,
8 34-06-01, 34-06-02, 34-06-03, 34-06-04, 34-06-07, 34-06-08, 34-06-09, 34-06-11, 34-06-12,
9 34-06-13, 34-06-14, 34-06-15, 34-06-17, 34-06-20, 34-06.1-02, 34-06.1-04, 34-06.1-05,
10 34-06.1-07, 34-07-02, 34-07-03, and 34-07-05, subsection 2 of section 34-07-06, sections
11 34-07-11, 34-07-14, 34-07-15, 34-07-17, 34-07-18, 34-07-19, 34-07-20, 34-07-21, 34-08-14,
12 and 34-12-01, subdivision f of subsection 2 of section 34-12-03, sections 34-12-06, 34-12-07,
13 34-12-08, 34-12-09, 34-12-12, 34-13-01, 34-13-02, 34-13-03, 34-13-04, 34-13-05, 34-13-07,
14 34-13-08, 34-13-09, 34-13-10, 34-13-12, 34-13-13.1, 34-13-15, 34-14-05, 34-14-06,
15 34-14-07.1, 34-14-08, 34-14-09, 34-14-10, 34-14-11, 40-57.1-04, 43-07-21, 43-07-22,
16 44-03-01, and 49-10.1-17, subsection 4 of section 50-06-01.8, section 52-01-03, subsection 5
17 of section 52-02.1-01, section 54-01.1-08, subsection 1 of section 54-06-04, sections
18 54-21.3-04.1, 54-34-12, 54-34-15, 54-34.3-01, 54-34.3-02, 54-34.3-03, 54-34.3-04, 54-34.3-05,
19 54-34.3-06, 54-34.3-08, 54-34.3-10, 54-34.3-11, 54-34.4-01, 54-34.4-02, and 54-34.4-04,
20 subsection 15 of section 54-44.3-20, sections 54-44.5-01, 54-44.5-02, 54-44.5-03, 54-44.5-05,
21 and 54-53-02, subsection 1 of section 54-57-03, sections 55-01-01 and 55-06-01, subsection 1
22 of section 57-38.5-01, section 57-38.5-08, subsection 6 of section 57-39.2-28, and section
23 65-04-15 of the North Dakota Century Code, relating to merging the division of community
24 services, department of economic development and finance, department of labor, and tourism
25 department to create a department of commerce; to repeal section 54-34.3-09 of the North

1 Dakota Century Code, relating to the department of economic development and finance; to
2 provide a penalty; to provide an appropriation; and to provide an effective date.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1. AMENDMENT.** Section 4-14.1-03 of the 1999 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **4-14.1-03. Agricultural products utilization commission - Composition -**
7 **Appointment.** The agricultural fuel tax fund must be administered by the agricultural products
8 utilization commission. The commission consists of nine members, five of whom must be
9 appointed by the governor for terms of two years each, arranged so that two terms expire in
10 odd-numbered years and three terms expire in even-numbered years. Three members
11 appointed by the governor must be actively engaged in farming in this state and two members
12 appointed by the governor must be actively engaged in business in this state. The
13 commissioner of agriculture shall appoint one member for a term of two years which expires in
14 odd-numbered years. The member appointed by the commissioner must be actively engaged
15 in farming in this state. Commission members may be reappointed to the commission. Terms
16 of commissioners shall run from the first day of July. The director of the department of
17 commerce division of economic development and finance, the president of North Dakota state
18 university, and the commissioner of agriculture, or their designees, are members of the
19 commission. The commission shall elect one of its members as chairman.

20 **SECTION 2. AMENDMENT.** Section 4-14.1-04 of the 1999 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **4-14.1-04. Agricultural products utilization commission - Meetings - Personnel -**
23 **Reports.** The agricultural products utilization commission, which is ~~a division~~ an office of the
24 department of commerce division of economic development and finance, shall meet as
25 necessary and shall report to each session of the legislative assembly. The commission may
26 secure office space, employ needed personnel for the performance of its duties, hire
27 consultants, spend any funds appropriated to the commission, and contract with public entities
28 or private parties for services.

29 **SECTION 3. AMENDMENT.** Section 6-12-02 of the 1999 Supplement to the North
30 Dakota Century Code is amended and reenacted as follows:

6-12-02. (Effective for first four taxable years beginning after December 31, 1998)

Establishment - Organization. Any financial institution or group of financial institutions may establish a corporation or a limited liability company to own and operate the housing development fund. Except as provided in this chapter, all authority regarding the articles of incorporation or articles of organization is the province of the governing board, which must include a representative of the Bank of North Dakota and a representative of the department of commerce division of economic development and finance. The fund administrator shall maintain the fund as an account at the Bank of North Dakota. The governing board is responsible for adopting policies and procedures governing activities in connection with the fund. The governing board may not distribute more than seventy-five percent of the net profit of the fund in any of the first five years of operation.

SECTION 4. AMENDMENT. Subsection 6 of section 10-30-04 of the North Dakota Century Code is amended and reenacted as follows:

6. Cooperate with and avail itself of the facilities of the department of commerce division of economic development and finance and any other similar governmental agencies; to cooperate with and assist, and otherwise encourage, local organizations in the various communities of the state the purpose of which are the promotion, assistance, and development of the business prosperity and economic welfare of such communities and of this state.

SECTION 5. AMENDMENT. Subsection 4 of section 10-30.5-02 of the North Dakota Century Code is amended and reenacted as follows:

4. The ~~director~~ commissioner of the department of ~~economic development and finance~~ commerce shall adopt rules, subject to the approval of the board of directors, necessary to implement the administration of the fund. The rules to implement the grant program must be developed to encourage local fundraising initiatives for developing locations for businesses financed by the corporation.

SECTION 6. AMENDMENT. Section 10-30.5-05 of the North Dakota Century Code is amended and reenacted as follows:

10-30.5-05. Management. The ~~deputy~~ director of the finance ~~division~~ office of the department of commerce division of economic development and finance must be the chief

1 executive officer of the corporation. The board of directors shall determine minimum
2 qualifications of all other staff positions.

3 All investments, contracts, partnerships, limited liability companies, and business
4 transactions of the corporation are the responsibility of the deputy director and the board of
5 directors. The board may provide that normal operating costs anticipated in an approved
6 budget may be incurred and paid without prior board approval.

7 **SECTION 7. AMENDMENT.** Subsection 6 of section 10-30.6-04 of the 1999
8 Supplement to the North Dakota Century Code is amended and reenacted as follows:

9 6. Cooperate with and avail itself of the facilities of the department of ~~economic~~
10 ~~development and finance~~ commerce and any other similar governmental agencies;
11 and cooperate with, assist, and otherwise encourage local organizations in the
12 various communities of the state, the purpose of which are the promotion,
13 assistance, and development of the business prosperity and economic welfare of
14 the communities and of this state.

15 **SECTION 8. AMENDMENT.** Section 14-02.4-21 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **14-02.4-21. Optional mediation by department of commerce division of labor -**
18 **Relief - Appeals - Records exempt.** The department of commerce division of labor may
19 receive complaints of discriminating employment practices under this chapter and may
20 investigate the complaints to determine if there is probable cause to believe the complaint is
21 meritorious and, if so, attempt to obtain voluntary compliance with this chapter's employment
22 requirements through informal advice, negotiation, or conciliation. This chapter does not
23 prohibit a person from filing, or require a person to file, a complaint with the ~~department~~ division
24 of labor before using the provisions of this chapter. A complaint received and information
25 obtained during any investigation conducted under this section are exempt from section
26 44-04-18 before the institution of any judicial proceedings under this chapter. The
27 ~~commissioner~~ director of the department of commerce division of labor may disclose to the
28 complainant or the respondent, or attorneys for the complainant or respondent, information
29 obtained under this section if deemed necessary by the ~~commissioner~~ director for securing an
30 appropriate resolution of a complaint. Any record or information held by the ~~department~~
31 division of labor pursuant to an agreement with any federal agency for the enforcement of fair

1 employment practices is exempt from section 44-04-18, and the ~~department~~ division of labor
2 may disclose to federal officials information obtained under this section if appropriate to carry
3 out the enforcement of fair employment practices pursuant to the agreement. The ~~department~~
4 division of labor may not disclose anything said or done as part of the informal negotiation or
5 conciliation efforts under this section.

6 **SECTION 9. AMENDMENT.** Subsection 3 of section 20.1-02-17.1 of the 1999
7 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 8 3. A detailed impact analysis from the state game and fish department shall be
9 included with the acquisition proposal for board of county commissioner
10 consideration in making recommendations. The analysis by the game and fish
11 department shall include, but shall not be limited to, the recreational and wildlife
12 impacts. In addition, the county agent of the affected county or counties shall
13 prepare an impact analysis for board of county commissioner consideration which
14 shall include the fiscal, social, and agricultural impacts of the proposed acquisition.
15 The state game and fish department shall reimburse the county or counties for any
16 expenses incurred by the county agent in preparing the analysis. The analyses
17 shall also be forwarded to the department of commerce division of community
18 services which shall furnish copies to all interested state agencies and political
19 subdivisions, which agencies and political subdivisions shall have thirty days to
20 review the analyses and return their comments to the division of community
21 services. Upon expiration of the thirty-day period, all comments received by the
22 division of community services shall be forwarded to the state game and fish
23 department. The state game and fish department may, after consideration of such
24 comments, file a final impact analysis with the division of community services and
25 the board of county commissioners.

26 **SECTION 10. AMENDMENT.** Section 20.1-02-18.1 of the 1999 Supplement to the
27 North Dakota Century Code is amended and reenacted as follows:

28 **20.1-02-18.1. Federal wildlife area acquisitions - Submission to county**
29 **commissioners, opportunity for public comment, and impact analysis required.** The
30 governor, the director, or their designees, responsible under federal law for final approval of
31 land, wetland, and water acquisitions by the United States department of the interior, its

bureaus or agencies, for waterfowl production areas, wildlife refuges, or other wildlife or waterfowl purposes, shall submit the proposed acquisitions by certified mail with return receipt to the board of county commissioners of the county or counties in which the land, wetland, and water areas are located for the board's recommendations.

The board of county commissioners of the county affected, or a designee or designees of the board, shall, within twenty-one days of receipt of an acquisition proposal, physically inspect the proposed acquisition areas. The board shall give public notice of the date, hour, and place where the public may comment on the proposed acquisitions. The notice must be published once each week for two successive weeks in the official newspaper of the county or counties in which the land and water areas are located. The notice must set forth the substance of the proposed action, and must include a legal description of the proposed acquisitions. The board of county commissioners shall make its recommendations by certified mail with return receipt within sixty days after receipt of an acquisition proposal.

A detailed impact analysis from the federal agency involved must be included with the acquisition proposal for board of county commissioner consideration in making recommendations. The analysis must include the recreational and wildlife impacts. In addition, the county agent of the affected county or counties shall prepare an impact analysis for board of county commissioner consideration which must include the fiscal, social, and agricultural impacts of the proposed acquisitions. The department of the interior shall reimburse the county or counties for any expenses incurred by the county agent in preparing the analysis. The analyses must also be forwarded to the department of commerce division of community services, which shall furnish copies to all interested state agencies and political subdivisions, which agencies and political subdivisions have thirty days to review the analyses and return their comments to the division of community services. Upon expiration of the thirty-day period, all comments received by the division of community services must be forwarded to the federal agency involved and to the state official or agency responsible for final acquisition approval. The federal agency may, after consideration of the comments, file a final impact analysis with the governor, the board of county commissioners, and any other state official or agency responsible for final acquisition approval.

SECTION 11. AMENDMENT. Section 21-11-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

21-11-02. Application for loan - Form - Contents - Preference of applications. Any

privately or cooperatively owned enterprise for the purpose of securing a loan from this state for purposes of planning, constructing, acquiring, equipping, improving, or extending facilities for the conversion of North Dakota's natural resources into low cost power and the generation and transmission of such power, and the acquisition of real and personal property and water and mineral rights needed for such facilities, or any of such purposes, may file an application with the department of commerce division of economic development and finance. The application must be in the form required by the ~~department~~ division and must be accompanied by a complete and fully detailed outline and description of the applicant's plan of operation. In the consideration of applications the ~~department~~ division shall consider the following factors:

1. Preference must be given to applicants with the following qualifications:

a. Applicants who are experienced in the generation or transmission of power, and who at the time of application have access to alternate markets for the sale of such power.

b. Applicants who are residents of North Dakota, or private or cooperative enterprises incorporated under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, corporation, or limited liability company owns part or all of the stock of the applicant or limited liability companies organized under the laws of North Dakota and having their headquarters in the state, whether or not a nonresident person, limited liability company, or corporation owns part or all of the membership interests of the applicant, or is engaged in a partnership or joint enterprise with the applicant.

2. The provisions of subsection 1 do not prohibit the ~~department~~ division from approving loans to applicants not possessing the qualifications therein described, if in the judgment of the ~~department~~ division such approval would better carry out the objectives of this chapter as stated in section 21-11-01.

3. Each application shall include information for the purpose of showing to the ~~department~~ division and may be approved only if the ~~department~~ division determines:

1 a. That the facilities proposed to be financed by the loan will result in significant
2 additional industrial or other economic activity in North Dakota which would
3 not occur in the absence of a state loan.

4 b. That the cost of power furnished by the facilities financed by the loan will be
5 significantly lower than it would be without a loan made under this chapter.

6 c. That the facilities financed will furnish power at the lowest possible cost to
7 stimulate industrial development, benefit the general public, and expand the
8 use of North Dakota fuel resources.

9 4. In considering applications the ~~department~~ division may establish additional
10 reasonable criteria with respect to the financial qualification of individuals and
11 organizations requesting loans.

12 **SECTION 12. AMENDMENT.** Section 21-11-03 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **21-11-03. Processing of application - Fee - Purpose.** The department of commerce
15 division of economic development and finance shall process each application and if it
16 determines the applicant is eligible for the loan and has complied with all requirements, it shall
17 request an application fee of not more than fifty thousand dollars. The fee must be deposited in
18 a special and separate fund in the state treasury and must be expended by the ~~department~~
19 division of economic development and finance for purposes of investigating the applicant and
20 evaluating the technical and economic feasibility of the plans and specifications as submitted by
21 the applicant. The ~~department~~ division may consult or contract with any person or private,
22 state, or federal department, agency, or entity, for purposes of that investigation or evaluation.
23 All departments, agencies, institutions, and officials of this state and its political subdivisions
24 shall provide to the ~~department~~ division of economic development and finance such aid,
25 information, and assistance as it may request in regard to any matter relative to the applicant or
26 such applicant's plans and specifications. The ~~department~~ division of economic development
27 and finance may conduct any private or public hearing it may deem necessary in the course of
28 that investigation or evaluation. Any unexpended portion of the funds received as an
29 application fee must be refunded to the applicant after the payment of all costs of investigation
30 and evaluation of the application. There is hereby appropriated from each application fee these

1 funds as may be necessary to pay all costs of investigation and evaluation and pay refunds as
2 provided in this section.

3 **SECTION 13. AMENDMENT.** Section 21-11-04 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **21-11-04. Approval or rejection of application.** Upon completion of all investigations
6 and evaluations of any matter relative to the applicant or the submitted application and plan, the
7 department of commerce division of economic development and finance shall either reject the
8 application as submitted, approve the application as submitted, or offer to approve the
9 application if modified in accordance with any recommendation made by the commission as a
10 result of any such investigation or evaluation. If the applicant fails or refuses to agree to those
11 modifications, the application must be rejected.

12 **SECTION 14. AMENDMENT.** Section 21-11-05 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **21-11-05. Approved application filed with industrial commission.** Upon approval of
15 the application, as submitted or modified, the department of commerce division of economic
16 development and finance shall file the application, along with its report and recommendations,
17 received by it as a result of any investigation and evaluation, with the ~~state~~ industrial
18 commission. The department of ~~economic development and finance~~ commerce shall prepare
19 and submit any necessary legislation for the appropriation of additional funds or the
20 authorization of the issuance of bonds at the following session of the legislative assembly, or at
21 a special session if called in accordance with the constitution.

22 **SECTION 15. AMENDMENT.** Section 21-11-06 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **21-11-06. Disbursements of loan - Inspection fee.** If the industrial commission finds
25 that the approved loan application has been filed and processed as required by this chapter and
26 the proposed loan agreement is in proper legal form and the amount to be disbursed
27 thereunder, with other previous disbursements, does not exceed the funds appropriated for that
28 purpose, it shall authorize the execution of the loan agreement with the applicant by the director
29 of the department of commerce division of economic development and finance on behalf of the
30 state. Prior to the disbursement of any funds pursuant to the loan agreement, the applicant
31 shall deliver to the director of the division of economic development and finance a supervision

1 fee in such amount as may be specified in the loan agreement, which fee must be deposited in
2 a special fund in the state treasury. The fee must be expended by the ~~department~~ division of
3 economic development and finance for the purpose of periodic inspection of the construction of
4 such power generation or transmission facilities, and disbursements to the borrower under the
5 loan agreement may be made only upon certification by the director or a person appointed by
6 the director ~~that~~ which the construction is being carried on in accordance with the loan
7 agreement and that the loan funds are due the borrower under the agreement. Upon the
8 completion of the construction of the facilities, any unexpended balance of the inspection fee
9 must be refunded to the borrower. There is hereby appropriated from each inspection fee those
10 funds as may be necessary to provide for the inspections and refunds as provided in this
11 section.

12 **SECTION 16. AMENDMENT.** Section 24-03-21 of the 1999 Supplement to the North
13 Dakota Century Code is amended and reenacted as follows:

14 **24-03-21. Preparation of road maps - Publication of tourist information.** The
15 commissioner shall prepare for general distribution; road maps of the state highway system and
16 other roads as the commissioner determines necessary. Any tourist-oriented material printed
17 on road maps must be prepared by the department of commerce division of tourism ~~department~~
18 at no cost to the department of transportation.

19 **SECTION 17. AMENDMENT.** Subsection 4 of section 26.1-50-01 of the 1999
20 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 21 4. "Primary sector business" means an individual, corporation, limited liability
22 company, partnership, or association that through the employment of knowledge or
23 labor adds value to a product, process, or service which results in the creation of
24 new wealth. Qualification as a primary sector business under this subsection must
25 be determined by the department of commerce division of economic development
26 and finance.

27 **SECTION 18. AMENDMENT.** Section 26.1-50-02 of the 1999 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **26.1-50-02. Establishment - Organization.** Any insurer or group of insurers may
30 establish a corporation or limited liability company to own and operate the North Dakota low-risk
31 incentive fund. Except as provided in this chapter, all authority regarding the articles of

1 incorporation or articles of organization is the province of the governing board, which must
2 include a representative of the Bank of North Dakota and the director of the department of
3 commerce division of economic development and finance. The Bank of North Dakota shall
4 administer the fund; however, the governing board is responsible for adopting fund policies and
5 procedures. The governing board may not distribute more than seventy-five percent of the net
6 profit of the fund in any of the first five years of operation.

7 **SECTION 19. AMENDMENT.** Section 28-32-01 of the 1999 Supplement to the North
8 Dakota Century Code is amended and reenacted as follows:

9 **28-32-01. (Effective through December 31, 2002) Definitions.** In this chapter, unless
10 the context or subject matter otherwise provides:

- 11 1. "Adjudicative proceeding" means an administrative matter resulting in an agency
12 issuing an order after an opportunity for hearing is provided or required. An
13 adjudicative proceeding includes administrative matters involving a hearing on a
14 complaint against a specific-named respondent; a hearing on an application
15 seeking a right, privilege, or an authorization from an agency, such as a
16 ratemaking or licensing hearing; or a hearing on an appeal to an agency. An
17 adjudicative proceeding includes reconsideration, rehearing, or reopening. Once
18 an adjudicative proceeding has begun, the adjudicative proceeding includes any
19 informal disposition of the administrative matter under section 28-32-05.1 or
20 another specific statute or rule, unless the matter has been specifically converted
21 to another type or proceeding under section 28-32-05.1. An adjudicative
22 proceeding does not include a decision or order to file or not to file a complaint, or
23 to initiate an investigation, an adjudicative proceeding, or any other proceeding
24 before the agency, or another agency, or a court. An adjudicative proceeding does
25 not include a decision or order to issue, reconsider, or reopen an order that
26 precedes an opportunity for hearing or that under another section of this code is
27 not subject to review in an adjudicative proceeding. An adjudicative proceeding
28 does not include rulemaking under this chapter.
- 29 2. "Administrative agency" or "agency" means each board, bureau, commission,
30 department, or other administrative unit of the executive branch of state
31 government, including one or more officers, or employees, or other persons directly

- 1 or indirectly purporting to act on behalf or under authority of the agency. An
2 administrative unit located within or subordinate to an administrative agency shall
3 be treated as part of that agency to the extent it purports to exercise authority
4 subject to this chapter. The term administrative agency does not include:
- 5 a. The office of management and budget except with respect to rules made
6 under section 32-12.2-14, rules relating to conduct on the capitol grounds and
7 in buildings located on the capitol grounds under section 54-21-18, rules
8 relating to the state building code as authorized or required under section
9 54-21.3-03, rules relating to the Model Energy Code as required under section
10 54-21.2-03, rules relating to the central personnel system as authorized under
11 section 54-44.3-07, rules relating to state purchasing practices as required
12 under section 54-44.4-04, rules relating to records management as authorized
13 or required under chapter 54-46, and rules relating to the central microfilm unit
14 as authorized under chapter 54-46.1.
 - 15 b. The adjutant general with respect to the division of emergency management.
 - 16 c. The council on the arts.
 - 17 d. The state auditor.
 - 18 e. The department of commerce with respect to the division of economic
19 development and finance.
 - 20 f. The dairy promotion commission.
 - 21 g. The education factfinding commission.
 - 22 h. The educational telecommunications council.
 - 23 i. The board of equalization.
 - 24 j. The board of higher education.
 - 25 k. The Indian affairs commission.
 - 26 l. The industrial commission with respect to the activities of the Bank of North
27 Dakota, the North Dakota housing finance agency, the North Dakota
28 municipal bond bank, the North Dakota mill and elevator association, and the
29 North Dakota farm finance agency.
 - 30 m. The department of corrections and rehabilitation except with respect to the
31 activities of the division of adult services under chapter 54-23.4.

- 1 n. The pardon advisory board.
- 2 o. The parks and recreation department.
- 3 p. The parole board.
- 4 q. The state fair association.
- 5 r. The state department of health with respect to the state toxicologist.
- 6 s. The board of university and school lands except with respect to activities
- 7 under chapter 47-30.1.
- 8 t. The administrative committee on veterans' affairs except with respect to rules
- 9 relating to the supervision and government of the veterans' home and the
- 10 implementation of programs or services provided by the veterans' home.
- 11 u. The industrial commission with respect to the lignite research fund except as
- 12 required under section 57-61-01.5.
- 13 v. The secretary of state with respect to rules adopted for the presidential
- 14 preference contest under section 16.1-11-02.2.
- 15 3. "Agency head" means an individual or body of individuals in whom the ultimate
- 16 legal authority of the agency is vested by law.
- 17 4. "Complainant" means any person who files a complaint before an administrative
- 18 agency pursuant to section 28-32-05; and any administrative agency which, when
- 19 authorized by law, files such a complaint before such agency or any other agency.
- 20 5. "Hearing officer" means any agency head or one or more members of the agency
- 21 head when presiding in an administrative proceeding, or, unless prohibited by law,
- 22 one or more other persons designated by the agency head to preside in an
- 23 administrative proceeding, an administrative law judge from the office of
- 24 administrative hearings, or any other person duly assigned, appointed, or
- 25 designated to preside in an administrative proceeding pursuant to statute or rule.
- 26 6. "License" means a franchise, permit, certification, approval, registration, charter, or
- 27 similar form of authorization required by law.
- 28 7. "Order" means any agency action of particular applicability that determines the
- 29 legal rights, duties, privileges, immunities, or other legal interests of one or more
- 30 specific persons, but does not mean an executive order issued by the governor.

- 1 8. "Party" means each person named or admitted as a party or properly seeking and
2 entitled as of right to be admitted as a party. An administrative agency may be a
3 party. In a hearing for the suspension, revocation, or disqualification of an
4 operator's license under title 39, the term may include each city and each county in
5 which the alleged conduct occurred, but the city or county may not appeal the
6 decision of the hearing officer.
- 7 9. "Person" includes an individual, association, partnership, corporation, limited
8 liability company, state governmental agency or governmental subdivision, or an
9 agency of such governmental subdivision.
- 10 10. "Relevant evidence" means evidence having any tendency to make the existence
11 of any fact that is of consequence to the determination of the administrative action
12 more probable or less probable than it would be without the evidence.
- 13 11. "Rule" means the whole or a part of an agency statement of general applicability
14 that implements or prescribes law or policy, or the organization, procedure, or
15 practice requirements of the agency. The term includes the adoption of new rules
16 and the amendment, repeal, or suspension of an existing rule. The term does not
17 include:
- 18 a. A rule concerning only the internal management of an agency which does not
19 directly or substantially affect the substantive or procedural rights or duties of
20 any segment of the public.
- 21 b. A rule that sets forth criteria or guidelines to be used by the staff of an agency
22 in the performance of audits, investigations, inspections, and settling
23 commercial disputes or negotiating commercial arrangements, or in the
24 defense, prosecution, or settlement of cases, if the disclosure of the statement
25 would:
- 26 (1) Enable law violators to avoid detection;
- 27 (2) Facilitate disregard of requirements imposed by law; or
- 28 (3) Give a clearly improper advantage to persons who are in an adverse
29 position to the state.
- 30 c. A rule establishing specific prices to be charged for particular goods or
31 services sold by an agency.

- d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

(Effective January 1, 2003) Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Adjudicative proceeding" means an administrative matter resulting in an agency issuing an order after an opportunity for hearing is provided or required. An adjudicative proceeding includes administrative matters involving a hearing on a complaint against a specific-named respondent; a hearing on an application seeking a right, privilege, or an authorization from an agency, such as a ratemaking or licensing hearing; or a hearing on an appeal to an agency. An adjudicative proceeding includes reconsideration, rehearing, or reopening. Once an adjudicative proceeding has begun, the adjudicative proceeding includes any informal disposition of the administrative matter under section 28-32-05.1 or another specific statute or rule, unless the matter has been specifically converted to another type or proceeding under section 28-32-05.1. An adjudicative proceeding does not include a decision or order to file or not to file a complaint, or

to initiate an investigation, an adjudicative proceeding, or any other proceeding before the agency, or another agency, or a court. An adjudicative proceeding does not include a decision or order to issue, reconsider, or reopen an order that precedes an opportunity for hearing or that under another section of this code is not subject to review in an adjudicative proceeding. An adjudicative proceeding does not include rulemaking under this chapter.

2. "Administrative agency" or "agency" means each board, bureau, commission, department, or other administrative unit of the executive branch of state government, including one or more officers, or employees, or other persons directly or indirectly purporting to act on behalf or under authority of the agency. An administrative unit located within or subordinate to an administrative agency shall be treated as part of that agency to the extent it purports to exercise authority subject to this chapter. The term administrative agency does not include:

- a. The office of management and budget except with respect to rules made under section 32-12.2-14, rules relating to conduct on the capitol grounds and in buildings located on the capitol grounds under section 54-21-18, rules relating to the state building code as authorized or required under section 54-21.3-03, rules relating to the Model Energy Code as required under section 54-21.2-03, rules relating to the central personnel system as authorized under section 54-44.3-07, rules relating to state purchasing practices as required under section 54-44.4-04, rules relating to records management as authorized or required under chapter 54-46, and rules relating to the central microfilm unit as authorized under chapter 54-46.1.
- b. The adjutant general with respect to the division of emergency management.
- c. The council on the arts.
- d. The state auditor.
- e. The department of commerce with respect to the division of economic development and finance.
- f. The dairy promotion commission.
- g. The education factfinding commission.
- h. The educational telecommunications council.

- 1 i. The board of equalization.
- 2 j. The board of higher education.
- 3 k. The Indian affairs commission.
- 4 l. The industrial commission with respect to the activities of the Bank of North
5 Dakota, the North Dakota housing finance agency, the North Dakota
6 municipal bond bank, the North Dakota mill and elevator association, and the
7 North Dakota farm finance agency.
- 8 m. The department of corrections and rehabilitation except with respect to the
9 activities of the division of adult services under chapter 54-23.4.
- 10 n. The pardon advisory board.
- 11 o. The parks and recreation department.
- 12 p. The parole board.
- 13 q. The state fair association.
- 14 r. The state department of health with respect to the state toxicologist.
- 15 s. The board of university and school lands except with respect to activities
16 under chapter 47-30.1.
- 17 t. The administrative committee on veterans' affairs except with respect to rules
18 relating to the supervision and government of the veterans' home and the
19 implementation of programs or services provided by the veterans' home.
- 20 u. The industrial commission with respect to the lignite research fund except as
21 required under section 57-61-01.5.
- 22 v. The secretary of state with respect to rules adopted for the presidential
23 preference contest under section 16.1-11-02.3.
- 24 3. "Agency head" means an individual or body of individuals in whom the ultimate
25 legal authority of the agency is vested by law.
- 26 4. "Complainant" means any person who files a complaint before an administrative
27 agency pursuant to section 28-32-05; and any administrative agency which, when
28 authorized by law, files such a complaint before such agency or any other agency.
- 29 5. "Hearing officer" means any agency head or one or more members of the agency
30 head when presiding in an administrative proceeding, or, unless prohibited by law,
31 one or more other persons designated by the agency head to preside in an

administrative proceeding, an administrative law judge from the office of administrative hearings, or any other person duly assigned, appointed, or designated to preside in an administrative proceeding pursuant to statute or rule.

6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by law.

7. "Order" means any agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons, but does not mean an executive order issued by the governor.

8. "Party" means each person named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. An administrative agency may be a party. In a hearing for the suspension, revocation, or disqualification of an operator's license under title 39, the term may include each city and each county in which the alleged conduct occurred, but the city or county may not appeal the decision of the hearing officer.

9. "Person" includes an individual, association, partnership, corporation, limited liability company, state governmental agency or governmental subdivision, or an agency of such governmental subdivision.

10. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the administrative action more probable or less probable than it would be without the evidence.

11. "Rule" means the whole or a part of an agency statement of general applicability that implements or prescribes law or policy, or the organization, procedure, or practice requirements of the agency. The term includes the adoption of new rules and the amendment, repeal, or suspension of an existing rule. The term does not include:

a. A rule concerning only the internal management of an agency which does not directly or substantially affect the substantive or procedural rights or duties of any segment of the public.

b. A rule that sets forth criteria or guidelines to be used by the staff of an agency in the performance of audits, investigations, inspections, and settling commercial disputes or negotiating commercial arrangements, or in the

defense, prosecution, or settlement of cases, if the disclosure of the statement would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the state.

- c. A rule establishing specific prices to be charged for particular goods or services sold by an agency.
- d. A rule concerning only the physical servicing, maintenance, or care of agency owned or operated facilities or property.
- e. A rule relating only to the use of a particular facility or property owned, operated, or maintained by the state or any of its subdivisions, if the substance of the rule is adequately indicated by means of signs or signals to persons who use the facility or property.
- f. A rule concerning only inmates of a correctional or detention facility, students enrolled in an educational institution, or patients admitted to a hospital, if adopted by that facility, institution, or hospital.
- g. A form whose contents or substantive requirements are prescribed by rule or statute or are instructions for the execution or use of the form.
- h. An agency budget.
- i. An opinion of the attorney general.
- j. A rule adopted by an agency selection committee under section 54-44.7-03.
- k. Any material, including a guideline, interpretive statement, statement of general policy, manual, brochure, or pamphlet, that is explanatory and not intended to have the force and effect of law.

SECTION 20. AMENDMENT. Section 34-05-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-01. Statistics relating to the employment of labor. The ~~commissioner~~ director of the department of commerce division of labor shall collect, systematize, and submit in biennial reports to the governor and the secretary of state in accordance with section 54-06-04

1 statistical details relating to the employment of labor in the state. The statistics may be
2 classified as the ~~commissioner of labor~~ director determines best.

3 **SECTION 21. AMENDMENT.** Section 34-05-01.1 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **34-05-01.1. Department of commerce division of labor.** There is hereby created the
6 North Dakota department of commerce division of labor. All records, materials, supplies, and
7 equipment used by the ~~deputy labor commissioner of agriculture and labor~~ in his the
8 commissioner's official capacity as administrator of the department of labor ~~division of the~~
9 ~~department of agriculture and labor~~ must be transferred to the department of ~~labor~~ commerce.

10 **SECTION 22. AMENDMENT.** Section 34-05-01.2 of the 1999 Supplement to the North
11 Dakota Century Code is amended and reenacted as follows:

12 **34-05-01.2. ~~Labor commissioner~~ Director of department of commerce division of**
13 **labor to administer department of labor.** ~~Beginning January 1, 1999, the governor~~ The
14 commissioner of commerce shall appoint a ~~labor commissioner~~ director of the department of
15 commerce division of labor to administer the ~~department~~ division of labor. The ~~labor~~
16 ~~commissioner shall serve~~ director of the division of labor serves at the pleasure of the ~~governor~~
17 commissioner of commerce.

18 **SECTION 23. AMENDMENT.** Section 34-05-01.3 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **34-05-01.3. Duties of ~~commissioner~~ director of department of commerce division**
21 **of labor.** The ~~commissioner~~ director of the department of commerce division of labor shall:

- 22 1. Improve working conditions and living conditions of employees and advance their
23 opportunities for profitable employment.
- 24 2. Foster, promote, and develop the welfare of both wage earners and industries in
25 North Dakota.
- 26 3. Promote friendly and cooperative relations between employers and employees.
- 27 4. Cooperate with other state agencies to encourage the development of new
28 industries and the expansion of existing industries.
- 29 5. Represent the state of North Dakota in dealings with the United States department
30 of labor, with the federal mediation and conciliation service, and with the United
31 States veterans' administration with respect to job training programs.

6. Acquire and disseminate information on the subjects connected with labor, relations between employers and employees, hours of labor, and working conditions.
7. Encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance.
8. Report biennially to the governor and to the legislative assembly concerning activities of the department of commerce division of labor, including in such report recommendations for legislation deemed necessary or desirable to effectuate the purposes of this chapter.
9. Administer the provisions of chapter 34-06 relating to wages and hours, chapter 34-07 relating to child labor, and the provisions of chapter 34-12 relating to labor-management relations.
10. Perform such other duties as may be required by law or as requested by the commissioner of commerce.

SECTION 24. AMENDMENT. Section 34-05-01.4 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-01.4. Independent contractors - Determination made by ~~commissioner~~ director. A person beginning work or working as an independent contractor may apply to the ~~commissioner~~ director to receive verification of independent contractor status. The ~~commissioner~~ director, upon receiving an application, shall review the circumstances of the applicant's job and other relevant information. ~~When~~ If the information supports a finding under the "common law" test that the applicant will be working or is working as an independent contractor, the ~~commissioner~~ director shall issue a determination to verify the status of the applicant as an independent contractor and shall issue the independent contractor an identification number that will be invalid if the applicant's job changes. If the applicant's job changes, the applicant may reapply for a determination to verify independent contractor status.

SECTION 25. AMENDMENT. Section 34-05-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-05-03. Officials and employers to furnish certain information - Records - Penalty. All public officers and all employers shall furnish to the ~~commissioner~~ director of the department of commerce division of labor such information as the ~~commissioner~~ director may

request relating to their respective offices or businesses. Any information collected, records, and determinations made under chapter 34-14, information collected under this section from private employers, and information collected under section 34-06-02 from private employers are exempt from section 44-04-18. The ~~commissioner~~ director shall disclose information collected, records, and determinations made to the parties to an investigation under chapter 34-14. ~~When~~ If the ~~commissioner~~ director enforces collection of a wage claim by judicial action or forwards records, information, or determinations to another state or country for enforcement as authorized under chapter 34-14, the information collected, records, and determinations made under chapter 34-14 are open records. The ~~commissioner~~ director may publish aggregate employment-related statistics. The ~~commissioner~~ director may provide a list of the names and addresses of employers to other agencies or to a private entity for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any information so provided may only be used for the purpose of jointly publishing or distributing publications or other information as provided in section 54-06-04.3. Any officer, employer, or operator or manager of any establishment wherein persons are employed, who fails or refuses to furnish the ~~commissioner~~ director with the information requested under the provisions of this section, is guilty of a class B misdemeanor.

SECTION 26. AMENDMENT. Section 34-05-04 of the North Dakota Century Code is amended and reenacted as follows:

34-05-04. Employment of assistants. The ~~commissioner~~ director of the department of commerce division of labor may employ necessary help and assistants for the purpose of administering and enforcing labor laws, rules, and regulations, and may fix their compensation and bonds. The total amount of compensation paid for such purposes, however, may not exceed the amount appropriated for compensation by the legislative assembly.

SECTION 27. AMENDMENT. Section 34-06-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-01. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "~~Commissioner~~" "Director" means the ~~commissioner~~ director of the department of commerce division of labor.

2. "Employee" includes any individual employed by an employer. However, an individual is not an "employee" while engaged in a ridesharing arrangement, as defined in section 8-02-07. The term does not include a person engaged in firefighting or sworn law enforcement officers for a political subdivision of the state.
3. "Employer" includes any ~~individual, partnership, association, corporation, limited liability company, the state and political subdivisions of the state, or any person or~~ group of persons acting in the interest of an employer in relation to an employee.
4. "Minor" means a person of either sex under the age of eighteen years.
5. "Occupation" means a business or industry, or a trade or branch thereof, but it does not include outside salesmen who are compensated on a commission basis.
6. "Wages" includes all payments made to or on behalf of an employee as remuneration for employment, whether calculated on a time, piece, job, or incentive basis.

SECTION 28. AMENDMENT. Section 34-06-02 of the North Dakota Century Code is amended and reenacted as follows:

34-06-02. Power to investigate conditions of labor and wages and hours of employees. ~~The commissioner has the power~~ director may:

1. Investigate and ascertain the wages and the hours and conditions of labor of employees in the different occupations in which they are employed within this state.
2. Inspect and examine, either in person or through authorized representative, all books, payrolls, and other records of any employer of employees appertaining to or bearing on the questions of hours or conditions of labor of any employee employed by such employer.
3. Require from any employer of employees a full and true statement of the wages paid to, and the hours and conditions of labor of, all employees ~~in his employ~~ of the employer.

SECTION 29. AMENDMENT. Section 34-06-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-03. ~~Commissioner~~ Director may adopt standards. ~~The commissioner~~ director, in the manner prescribed in this chapter, may ascertain and prescribe:

- 1 1. Standards of hours of employment for employees and what are unreasonably long
- 2 hours for employees in any occupation within this state.
- 3 2. Standards of conditions of labor for employees in any occupation within this state
- 4 and what surroundings or conditions, sanitary or otherwise, are detrimental to the
- 5 health or morals of employees in any such occupation.
- 6 3. Standards of minimum wages for employees in any occupation in this state.
- 7 4. Standards of minimum wages for minors in any occupation within this state and
- 8 what wages are unreasonably low for any such minor workers.

9 **SECTION 30. AMENDMENT.** Section 34-06-04 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **34-06-04. Power to make rules.** The commissioner of commerce may prepare, adopt,
12 and promulgate rules and regulations to carry into effect the various provisions of this chapter
13 and may make any rules and regulations which may be required for the selection of members of
14 conferences provided for in this chapter and for the regulation of the mode of procedure at such
15 conferences.

16 **SECTION 31. AMENDMENT.** Section 34-06-07 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **34-06-07. Employer to keep register of employees employed - Inspection and**
19 **examination of register.** Every employer shall keep a register of the names of all that
20 employer's employees employed by him, and on request shall permit the ~~commissioner~~ director
21 or any of ~~his~~ the director's authorized representatives to inspect and examine such register.

22 **SECTION 32. AMENDMENT.** Section 34-06-08 of the North Dakota Century Code is
23 amended and reenacted as follows:

24 **34-06-08. Investigations and hearings by ~~commissioner~~ director - Subpoena,**
25 **oath, and fees of witnesses.** The ~~commissioner~~ director may hold public hearings for the
26 purpose of investigating any of the matters ~~he~~ the director is authorized to investigate under the
27 provisions of this chapter. Such hearings must be held at such times and places as ~~he~~ the
28 director deems fit. Any person interested in a matter under investigation may appear and testify
29 at any public hearing held thereon. The ~~commissioner~~ director or ~~his~~ the director's duly
30 authorized representative may subpoena and compel the attendance of any witness at any
31 public hearing or at any session of any conference called and held as provided in this chapter,

1 and may administer an oath to any witness who is to testify thereat. A witness subpoenaed by
2 the ~~commissioner~~ director or by ~~his~~ the director's representative must be paid the same
3 mileage and per diem as are paid to witnesses in civil cases before the district court.

4 **SECTION 33. AMENDMENT.** Section 34-06-09 of the 1999 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **34-06-09. Conference to consider investigation by ~~commissioner~~ director -**
7 **Members, quorum, report.** If, after having investigated the matter, the ~~commissioner~~ director
8 is of the opinion that any substantial number of employees in any industry are working for
9 unreasonably long hours or are working under surroundings or conditions detrimental to their
10 health or morals, the ~~commissioner~~ director may call a conference for the purpose of
11 considering and reporting on such subject as may be submitted to it. The conference must be
12 composed of not more than three representatives of the employers in that industry, of an equal
13 number of the representatives of the employees in that industry, of not more than three
14 disinterested persons representing the public, and of the ~~commissioner~~ director or the
15 ~~commissioner's~~ director's representative. The ~~commissioner~~ director shall name and appoint
16 all the members of such conference. Two-thirds of the members of any such conference
17 constitute a quorum. The ~~commissioner~~ director shall present to such conference all
18 information and evidence in the ~~commissioner's~~ director's possession or under the control of
19 the department of commerce division of labor which relates to the subject of the inquiry and
20 shall cause to be brought before such conference any witness whose testimony the
21 ~~commissioner~~ director deems material. After completing its consideration of any inquiry
22 submitted to it by the ~~commissioner~~ director, such conference shall make and transmit to the
23 ~~commissioner~~ director a report containing its findings and recommendations on the subject.

24 **SECTION 34. AMENDMENT.** Section 34-06-11 of the 1999 Supplement to the North
25 Dakota Century Code is amended and reenacted as follows:

26 **34-06-11. Consideration of report by ~~commissioner~~ director - Hearing upon**
27 **approval.** Upon the receipt of any report from any conference held as provided in section
28 34-06-09, the ~~commissioner~~ director shall consider and review the recommendations contained
29 in the report, and may approve or disapprove any of such recommendations. The
30 ~~commissioner~~ director may resubmit to the same conference or to any new conference any
31 subject covered by any recommendations which the ~~commissioner~~ director has disapproved.

1 **SECTION 35. AMENDMENT.** Section 34-06-12 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **34-06-12. Order issued by ~~commissioner~~ director - Posting.** After the hearing
4 provided for in section 34-06-11 has been held, the ~~commissioner~~ director may make and
5 render any order necessary to adopt the recommendations, carry the recommendations into
6 effect, and require all employers affected to observe and comply with the recommendations and
7 order. An employer may not violate or disregard the terms or provisions of the order. The
8 ~~commissioner~~ director shall mail a summary of the order to every employer affected by the
9 order. The employer shall keep a copy of the order posted in a conspicuous place in a
10 commonly frequented area of the employer's establishment in which employees work.

11 **SECTION 36. AMENDMENT.** Section 34-06-13 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **34-06-13. Investigation of employment of minors - Recommendations and**
14 **requirements governing.** The ~~commissioner~~ director, at any time, may inquire into the wages,
15 hours, or conditions of labor of minors employed in any occupation in this state and may
16 determine what are suitable wages, hours, and conditions of labor for such minors. When the
17 ~~commissioner~~ director has made such determination, ~~he~~ the director may issue an obligatory
18 order in the manner provided in this chapter, and after such order is effective, no employer in
19 that occupation may violate or disregard the terms or provisions thereof or employ any minor at
20 less wages or for more hours or under different conditions than are specified therein. No order
21 of the ~~commissioner~~ director may permit the employment of any minor for more hours per day
22 or per week than the maximum specified in chapter 34-07 nor at any times nor under any
23 conditions prohibited by such chapter.

24 **SECTION 37. AMENDMENT.** Section 34-06-14 of the 1999 Supplement to the North
25 Dakota Century Code is amended and reenacted as follows:

26 **34-06-14. Right of appeal from ~~commissioner's~~ director's decision limited.** Except
27 as otherwise provided in this chapter, all questions of fact arising under this chapter must be
28 determined by the ~~commissioner~~ director. There may be no appeal from the decision of the
29 ~~commissioner~~ director on any question of fact, but there is a right of appeal from the
30 ~~commissioner~~ director to the district court of Burleigh County from any ruling or holding on any
31 question of law included or embodied in any decision or order of the ~~commissioner~~ director, and

there is a right of appeal from the district court to the supreme court of this state. In all such appeals, the attorney general shall appear for and represent the ~~commissioner~~ director.

SECTION 38. AMENDMENT. Section 34-06-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-15. Special license to employ at less than minimum wage. The ~~commissioner~~ director may issue to an employee whose productive capacity for the work to be performed is impaired by physical or mental disability, or to any student or learner enrolled in a vocational education or related program, a special license authorizing the employment of that licensee at less than the minimum wage. The ~~commissioner~~ director may also issue special licenses to community rehabilitation programs for the handicapped which engage in the occupation and responsibility of representing and placing for the purpose of training, learning, or employment of those employees whose productive capacity for the work to be performed is impaired by physical or mental disability. The ~~commissioner~~ director shall issue such licenses under rules adopted by the commissioner of commerce.

SECTION 39. AMENDMENT. Section 34-06-17 of the North Dakota Century Code is amended and reenacted as follows:

34-06-17. Investigation of compliance with orders - Failure to observe or comply. The ~~commissioner~~ director, from time to time, shall investigate and ascertain whether ~~or not~~ employers in this state are observing and complying with ~~his~~ the director's orders issued pursuant to the provisions of this chapter, and shall take such steps as may be necessary to cause the prosecution of employers failing to observe or comply therewith.

SECTION 40. AMENDMENT. Section 34-06-20 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06-20. Biennial report. The ~~commissioner~~ director shall submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

SECTION 41. AMENDMENT. Section 34-06.1-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-06.1-02. Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. ~~"Commissioner"~~ "Director" means the ~~commissioner~~ director of the department of commerce division of labor.

2. "Employ" includes to suffer or permit to work.
3. "Employee" means any individual employed by an employer, including individuals employed by the state or any of its political subdivisions including public bodies.
4. "Employer" means any person acting directly or indirectly in the interest of an employer in relation to one or more employees of each sex.
5. "Occupation" includes any industry, trade, business or branch thereof, or any employment or class of employment, but does not include domestic employment in private homes.
6. ~~"Person" includes one or more individuals, partnerships, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, or voluntary associations.~~
7. "Wage rate" means all compensation for employment, including payment in kind and amounts paid by employers for employee benefits, as defined by the commissioner of labor in regulations issued under this chapter.

SECTION 42. AMENDMENT. Section 34-06.1-04 of the North Dakota Century Code is amended and reenacted as follows:

34-06.1-04. Powers of ~~commissioner~~ director. The ~~commissioner~~ director has power and it is ~~his~~ the director's duty to carry out the provisions of this chapter and for this purpose, the ~~commissioner~~ director, or ~~his~~ the director's authorized representative, has power to:

1. With the consent of the employer or upon appropriate court order, for cause, enter the place of employment of any employer to inspect and copy payrolls and other employment records, to compare character of work and operations on which persons employed by ~~him~~ the director are engaged, to question such persons, and to obtain such other information as is reasonably necessary to the administration and enforcement of this chapter.
2. Examine witnesses under oath, and to require by subpoena the attendance and testimony of witnesses and the production of any documentary evidence relating to the subject matter of any investigation undertaken pursuant to this section.

3. Eliminate pay practices unlawful under this chapter, by informal methods of conference, conciliation and persuasion, and to supervise the payment of wages owing to any employee under this chapter.

4. Issue such regulations, not inconsistent with the purpose of this chapter, as ~~he~~ the director deems necessary or appropriate to carry out its provisions.

Witnesses summoned by the ~~commissioner~~ director or ~~his~~ the director's authorized representative must be paid the same fees as are allowed witnesses attending the district courts of this state. In the event of the failure of a person to attend, testify, or produce documents under or in response to a subpoena, the court on application of the ~~commissioner~~ director or ~~his~~ the director's representative may issue an order requiring said person to appear before the ~~commissioner~~ director or authorized representative, or to produce documentary evidence, and any failure to obey such order of the court may be punished by the court as a contempt thereof.

SECTION 43. AMENDMENT. Section 34-06.1-05 of the North Dakota Century Code is amended and reenacted as follows:

34-06.1-05. Collection of unpaid wages and other relief. Any employer who violates the provisions of section 34-06.1-03 is liable to the employee or employees affected in the amount of their unpaid wages, and in instances of willful violation in employee suits up to an additional equal amount as liquidated damages. Action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of ~~himself~~ or themselves and other employees similarly situated. The court in such action shall, in cases of violation in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action. An agreement by any such employee to work for less than the wage to which such employee is entitled under this chapter is not a bar to any such action, or to a voluntary wage restitution of the full amount due under this chapter. At the written request of any employee claiming to have been paid less than the wage to which ~~he~~ the employee may be entitled under this chapter, the ~~commissioner~~ director may bring any legal action necessary in behalf of the employee to collect such claim for unpaid wages. The ~~commissioner~~ director may not be required to pay the filing fee, or other costs, in connection with such action. The ~~commissioner has the power to~~ director may join various claims against the employer in one claim for relief. In proceedings under this

section, the court may order other affirmative action as appropriate, including reinstatement of employees discharged in violation of this chapter. ~~The commissioner has the power to~~ director may petition any court of competent jurisdiction to restrain violations of section 34-06.1-03, and for such affirmative relief as the court may deem appropriate, including restoration of unpaid wages and reinstatement of employees, consistent with the purpose of this chapter.

SECTION 44. AMENDMENT. Section 34-06.1-07 of the North Dakota Century Code is amended and reenacted as follows:

34-06.1-07. Records and reporting. Every employer subject to this chapter shall make, keep, and maintain such records of the wages and wage rates, job classifications, and other terms and conditions of employment of the persons employed by ~~him~~ that employer, and shall preserve such records for such periods of time, and shall make such reports therefrom as the ~~commissioner~~ director prescribes.

SECTION 45. AMENDMENT. Section 34-07-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-02. Certificate of employment required - Inspection - List of minors employed to be kept. A minor fourteen or fifteen years of age may not be employed or permitted to work in any occupation except farm labor, domestic service, or in the employment of, and under the direct supervision of, the minor's parent or guardian unless the minor is exempt from compulsory school attendance under subsection 2, 3, or 4 of section 15-34.1-03 or, unless the minor has an employment certificate signed by the minor's parent or guardian in accordance with the provisions of this chapter. Any person, firm, corporation, or limited liability company employing a minor must keep on file a completed employment certificate, for each minor, as provided in this chapter. The employment certificate must be accessible to inspection by the principal of the school ~~which~~ that the minor attends, a principal in the municipality in which the minor resides, or the director of the department of commerce division of labor ~~commissioner~~ or the ~~commissioner's~~ director's agent or representative.

SECTION 46. AMENDMENT. Section 34-07-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-03. Question of age of minor employee - Who may raise - Duties of employer - Evidence required. Any person, ~~firm, corporation, or limited liability company~~ employing a minor who appears to be under the age of sixteen years and for whom an

1 employment certificate is not filed as required by the provisions of this chapter, either shall
2 furnish satisfactory evidence that such minor is sixteen years of age or older or shall cease to
3 employ such minor or to permit the minor to work in such employment immediately after a
4 demand is made upon the employer to do so by:

- 5 1. The principal of the school ~~which~~ that the minor attends or a principal in the
6 municipality in which the minor resides;
- 7 2. The ~~commissioner~~ director of the department of commerce division of labor or the
8 ~~commissioner's~~ director's agent or representative; or
- 9 3. Any other officer charged with the enforcement of child labor, compulsory school
10 attendance, or other child welfare laws.

11 The officer making such demand may require the same evidence, and only the same evidence,
12 of age of the minor as is required on the issuance of an employment certificate under the
13 provisions of this chapter.

14 **SECTION 47. AMENDMENT.** Section 34-07-05 of the 1999 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **34-07-05. Who may issue certificates - Where certificates may be obtained.** An
17 employment certificate must be in writing and must be issued by the minor's parent or guardian.
18 The parent or guardian who certifies, or rejects, the employment certificate must file a
19 completed copy with the department of commerce division of labor, the employer, the principal
20 of the school ~~which~~ that the minor attends, or a principal in the municipality in which the minor
21 resides, within ten days of certification or rejection. No employment certificate is required for
22 any minor then in, or who is about to enter, the minor's own employment or the employment of
23 a firm, corporation, or limited liability company of which the minor is a member, officer, or
24 manager. The ~~commissioner~~ director of the department of commerce division of labor shall
25 make the certificates of employment available.

26 **SECTION 48. AMENDMENT.** Subsection 2 of section 34-07-06 of the 1999
27 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 28 2. Documentary evidence satisfactory to the ~~commissioner~~ director of the department
29 of commerce division of labor, such as a certificate of arrival in the United States
30 issued by the United States immigration officers and showing the age of the child,
31 a passport showing the age of the child, a valid driver's license, a baptismal

certificate, or a life insurance policy. Such other satisfactory documentary evidence must have been in existence for at least one year, and in the case of a life insurance policy, for at least four years.

SECTION 49. AMENDMENT. Section 34-07-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-11. Requirements for certificate for school term but not during daily session - Truant or deficient minor not to be employed. A certificate permitting the employment of a minor during the school term, but not during the daily period of the school session, may be granted if such minor maintains a passing grade in all studies pursued by ~~him~~ the student in such school. No minor may be employed who at the time is guilty of truancy or of deficiency in studies, as determined by the minor's parent or guardian, or the principal of the school ~~which~~ that the minor attends, or a principal in the municipality in which the minor resides, or the ~~commissioner~~ director of the department of commerce division of labor or the ~~commissioner's~~ director's agent or representative.

SECTION 50. AMENDMENT. Section 34-07-14 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-14. Revocation of certificate - Notice - Return of revoked certificate. Whenever it appears to the minor's parent or guardian, or the principal of the school ~~which~~ that the minor attends, a principal in the municipality in which the minor resides, or the ~~commissioner~~ director of the department of commerce division of labor or the ~~commissioner's~~ director's agent or representative who issued an employment certificate, or to the person's successor, that such certificate has been improperly or illegally issued or that the physical or moral welfare of the minor would be best served by the revocation of the certificate, such certificate may be revoked. The revoking officer shall give notice of the revocation by registered or certified mail to the person employing such minor and to the minor holding the certificate. Immediately upon receiving notice of the revocation of the certificate the employer shall return the revoked certificate to the officer revoking the same and shall discontinue the employment of the minor. Revocation of a permit must be registered with the ~~commissioner of labor~~ director or the ~~commissioner's~~ director's agent within ten days.

SECTION 51. AMENDMENT. Section 34-07-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-15. Maximum hours of labor of minors fourteen or fifteen years of age -

Notice to be posted. A minor fourteen or fifteen years of age may not be employed or permitted to work at any occupation, except in domestic services and at farm labor, before the hour of seven a.m. nor after the hour of seven p.m., except that these hours are seven a.m. to nine p.m. from June first through labor day, nor more than eighteen hours during schoolweeks, nor more than three hours on schooldays, nor more than forty hours during nonschoolweeks, nor more than eight hours on nonschooldays. A schoolweek is considered to be any week Monday through Sunday in which a youth is required to be in attendance, for any period of time, four or more days. Provided, however, that the limitations restricting hours of work during schoolweeks and schooldays do not apply to minors who are not attending school because they are excepted from compulsory school attendance by subsection 2, 3, or 4 of section 15-34.1-03. Every employer shall post in a conspicuous place where minors are employed, a printed notice stating the hours of work required of the minors each day of the week, the hours of commencing and stopping work, and the hours allowed for dinner or other meals. The printed form of the notice must be furnished by the director of the department of commerce division of labor ~~commissioner~~. The employment of any minor for a longer period than that stated in the notice is a violation of this chapter.

SECTION 52. AMENDMENT. Section 34-07-17 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-17. Permit to work in theater or place of amusement. A minor under sixteen years of age may be employed to act or perform in a theater or place of amusement if a permit so to do is obtained from the minor's parent or guardian and the ~~commissioner~~ director of the department of commerce division of labor or the ~~commissioner's~~ director's agent or representative, if such person decides that the appearance of such minor will not be detrimental to the minor's morals, health, safety, welfare, or education.

SECTION 53. AMENDMENT. Section 34-07-18 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-07-18. Inspection of factories and establishments by peace officers - Report - Complaints. Peace officers may visit any business establishments within their several jurisdictions to ascertain whether any minors are employed therein contrary to the provisions of this chapter. The peace officers shall report all cases of illegal employment to the

1 ~~commissioner~~ director of the department of commerce division of labor. Such officers may
2 require that the employment certificates of employees which an employer is required to keep
3 under the provisions of this chapter be produced for inspection. Complaints for offenses under
4 this chapter may be made by any peace officer or by any other person cognizant of the facts.

5 **SECTION 54. AMENDMENT.** Section 34-07-19 of the 1999 Supplement to the North
6 Dakota Century Code is amended and reenacted as follows:

7 **34-07-19. Duties of ~~commissioner~~ director of department of commerce division of**
8 **labor.** The ~~commissioner~~ director of the department of commerce division of labor shall
9 prepare all employment certificates necessary in the administration of this chapter, shall
10 distribute such employment certificates to the school officers, parents, guardians, and
11 authorities of this state, shall exercise general supervision, interpretation, and exemption
12 powers over the administration of the provisions of this chapter, and shall enforce the same.
13 The ~~commissioner~~ director and the ~~commissioner's~~ director's agents and representatives have
14 full power of visitation and inspection of all business establishments in which minors may be
15 employed or permitted to work.

16 **SECTION 55. AMENDMENT.** Section 34-07-20 of the 1999 Supplement to the North
17 Dakota Century Code is amended and reenacted as follows:

18 **34-07-20. ~~Commissioner~~ Director of department of commerce division of labor**
19 **may issue orders with reference to employment of minors.** In addition to the powers
20 vested in the ~~commissioner~~ director of the department of commerce division of labor by the
21 provisions of chapter 34-06, the commissioner of commerce and the director may issue general
22 and special orders with reference to the employment of minors and may prohibit or exempt the
23 employment of minors in any employment or place of employment which is dangerous or
24 prejudicial to the life, health, safety, or welfare of such minors. Any such regulation or order is
25 in addition to the regulations specified in this chapter.

26 **SECTION 56. AMENDMENT.** Section 34-07-21 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **34-07-21. Penalty.** Any person who employs any minor contrary to the provisions of
29 this chapter or of any order or regulation promulgated by the commissioner of commerce or the
30 director of the department of commerce division of labor as provided by law is guilty of an
31 infraction.

1 **SECTION 57. AMENDMENT.** Section 34-08-14 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **34-08-14. Mediators - Appointment - Functions - Compensation.** The state
4 ~~commissioner~~ director of the department of commerce division of labor ~~has power to~~ may act
5 as mediator, or to appoint any competent, impartial, disinterested person to act as mediator, in
6 any labor dispute either upon ~~his~~ the director's own initiative or upon the request of one of the
7 parties to the dispute. It is the function of such mediator to bring the parties together voluntarily
8 under such favorable auspices as will tend to effectuate settlement of the dispute, but neither
9 the mediator nor the ~~commissioner~~ director has any power of compulsion in mediation
10 proceedings. The ~~commissioner~~ director shall provide necessary expenses for such mediators,
11 other than for ~~himself~~ the director or ~~his~~ the director's deputy, as ~~he~~ the director may appoint,
12 under reasonable compensation plus per diem expenses for each such mediator, and prescribe
13 reasonable rules of procedure for such mediators.

14 **SECTION 58. AMENDMENT.** Section 34-12-01 of the 1999 Supplement to the North
15 Dakota Century Code is amended and reenacted as follows:

16 **34-12-01. Definitions.** In this chapter, unless the context or subject matter otherwise
17 requires:

- 18 1. ~~"Commissioner"~~ "Director" means the ~~North Dakota commissioner~~ director of the
19 department of commerce division of labor, ~~his~~ the director's successor, or ~~his~~ the
20 director's duly authorized deputy.
- 21 2. "Employee" includes any employee, and is not limited to the employees of a
22 particular employer, unless the chapter explicitly states otherwise, and includes
23 any individual whose work has ceased as a consequence of, or in connection with,
24 any current labor dispute or because of any unfair labor practice, and who has not
25 obtained any other regular and substantially equivalent employment, but does not
26 include any individual employed as an agricultural laborer, or in the domestic
27 service of any family or person at ~~his~~ the employee's home, or any individual
28 employed by ~~his~~ the employee's parent or spouse, or any individual having the
29 status of an independent contractor, or any individual employed as a supervisor or
30 guard, or any individual employed by an employer subject to the Railway Labor Act

[Pub. L. 69-257; 44 Stat. 577; 45 U.S.C. 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

3. "Employer" includes any person acting as an agent of an employer, directly or indirectly, but does not include the United States or any wholly owned government corporation, or any federal reserve bank, or any state or political subdivision thereof, or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual, or any person subject to the Railway Labor Act [Pub. L. 69-257; 44 Stat. 577; 45 U.S.C. 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization, or any farmer.

4. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

~~5. "Person" includes one or more individuals, labor organizations, partnerships, associations, corporations, limited liability companies, legal representatives, trustees, trustees in bankruptcy, or receivers.~~

~~6.~~ "Representatives" includes any individual or labor organization.

~~7.~~ 6. "Unfair labor practice" means any unfair labor practice as provided in section 34-12-03.

SECTION 59. AMENDMENT. Subdivision f of subsection 2 of section 34-12-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

f. To require of employees as a condition for membership the payment of fees found by the ~~commissioner~~ director to be excessive or discriminatory.

SECTION 60. AMENDMENT. Section 34-12-06 of the North Dakota Century Code is amended and reenacted as follows:

34-12-06. Determination of bargaining unit by ~~commissioner~~ director. The ~~commissioner~~ director shall decide in each case whether in order to assure to employees the fullest freedom in exercising rights guaranteed by this chapter, the unit appropriate for the

purposes of collective bargaining is the employer unit, craft unit, plant unit, or subdivision thereof. The ~~commissioner~~ director may not:

1. Decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit.
2. Decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior commissioner of labor or director determination, unless a majority of the employees in the proposed craft unit vote against separate representation.
3. Decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization may be certified as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

In determining whether a unit is appropriate, the extent to which the employees have organized is not controlling.

SECTION 61. AMENDMENT. Section 34-12-07 of the North Dakota Century Code is amended and reenacted as follows:

34-12-07. Informal conference - Hearing on representation questions - Election requirements.

1. The ~~commissioner~~ director shall promptly fix a date for an informal conference upon due notice to all parties whenever a petition has been filed, in accordance with this chapter:
 - a. By an employee or group of employees or any individual or labor organization acting in their behalf alleging that at least thirty percent of employees wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 34-12-05, or assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining

representative, is no longer a representative as defined in section 34-12-05;
or

- b. By an employer, alleging that one or more individuals or labor organizations have presented to ~~him~~ the employer a claim to be recognized as the representative defined in section 34-12-05.

2. If upon the informal conference:

- a. All parties agree that a question of representation exists and consent to an election, the ~~commissioner~~ director shall conduct an election upon secret ballot forthwith.

- b. The parties cannot agree that a question of representation exists, the ~~commissioner~~ director shall hold a hearing and if upon such hearing the ~~commissioner~~ director finds a question of representation exists, ~~he~~ the director shall conduct an election by secret ballot and shall certify the results thereof.

No election may be directed in any bargaining unit or any subdivision within which in the preceding twelve-month period a valid election has been held. Employees on strike who are not entitled to reinstatement are not eligible to vote. In any election where none of the choices on the ballot receives a majority, a runoff must be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

3. When a petition is filed as above provided, or the bargaining representative has been questioned, or a strike is to be called by the bargaining representative certified to represent employees, and the issue cannot be determined informally, the ~~commissioner~~ director shall notify the employees, the employer, and such other persons as ~~he~~ the director deems necessary, requiring employees and the employer to each appoint a representative to act with the ~~commissioner~~ director in the conduct of an impartial and secret ballot election to determine a bargaining agent, or whether a strike shall be had, or determine whether the present bargaining agent is no longer the representative bargaining agent. If any party ~~shall decline~~ declines or ~~neglect~~ neglects to appoint a representative, the ~~commissioner~~ director shall appoint some fair and impartial person to act as such

party's representative. Such election board, consisting of a representative of the employees, a representative of the employer, and the ~~commissioner~~ director shall thereupon designate a reasonable time within ten days after such board is constituted when such vote must be held, which election must be upon the premises of the employer during working hours. The board shall conduct an impartial secret ballot in which all employees of the appropriate bargaining unit involved have the right to cast a vote. Within twenty-four hours immediately after the completion of the election, such election board shall make an accurate and complete tabulation of the votes cast in such election and shall prepare a written certificate, which must bear the signature of the ~~commissioner~~ director, and a copy of such certificate must be delivered to the employer and to the employees or their bargaining agent.

4. No election is valid unless at least fifty-one percent of the employees in the appropriate bargaining unit cast valid ballots. If fifty-one percent of the employees in the appropriate bargaining unit fail to cast valid ballots at such election, a second election must be held forthwith. If on such second election fifty-one percent participation is not obtained, no further elections may be held for a period of one year.

SECTION 62. AMENDMENT. Section 34-12-08 of the North Dakota Century Code is amended and reenacted as follows:

34-12-08. Authority of ~~commissioner~~ director. Whenever it is charged that any person is engaged in or has engaged in any unfair labor practice, the ~~commissioner~~ director shall investigate the charges informally and if it appears that an unfair labor practice is occurring or has occurred, the ~~commissioner has power to~~ director may issue and cause to be served upon such person a written specification of the issues which are to be considered and determined. If, upon the evidence, the ~~commissioner~~ director is of the opinion that any person named in the written specifications has engaged in or is engaging in any such unfair labor practice, ~~he~~ the director shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without backpay, as will effectuate the policies of this chapter. Where an order requires reinstatement of an employee,

backpay may be required of the employer or employee organization, as the case may be, responsible for the discrimination suffered by the employee. No order of the ~~commissioner~~ director may require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to ~~him~~ that employee of any backpay, if such individual was suspended or discharged for cause. If the order is not obeyed, the ~~commissioner has the authority to~~ director may apply to the appropriate district court for such action as is necessary to enforce ~~his~~ the director's order, including injunction and mandamus proceedings. The ~~commissioner~~ director may act as a conciliator in any labor dispute.

SECTION 63. AMENDMENT. Section 34-12-09 of the North Dakota Century Code is amended and reenacted as follows:

34-12-09. Power to promulgate regulations. The commissioner ~~has the authority to~~ of commerce may promulgate reasonable regulations to effectuate the purposes of this chapter.

SECTION 64. AMENDMENT. Section 34-12-12 of the North Dakota Century Code is amended and reenacted as follows:

34-12-12. Reporting by labor organization. The ~~commissioner~~ director is hereby designated as the official of the state of North Dakota authorized to receive copies of reports made to the secretary of labor of the United States by virtue of the Labor-Management Reporting and Disclosure Act of 1959 [Pub. L. 86-257; 73 Stat. 525; 29 U.S.C. 432], as amended from time to time. In the event such reports have not been made to the secretary of labor of the United States by a labor organization, such labor organization shall file with the ~~commissioner~~ director, within ninety days after the close of its fiscal year, a report giving the name of the labor organization, its mailing address, and the name, title, and address of each of its officers. The governor shall request copies of all reports filed by labor organizations subject to the jurisdiction of the state of North Dakota from the United States secretary of labor.

SECTION 65. AMENDMENT. Section 34-13-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-13-01. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. ~~"Commissioner"~~ "Director" means the ~~commissioner~~ director of the department of commerce division of labor.

- 1 2. "Employee" means any person, whether employed or unemployed, seeking or
2 entering into any arrangement for employment or change of employment through
3 the medium of service of an employment agent.
- 4 3. "Employer" means any person, firm, corporation, limited liability company, or
5 association employing or seeking to enter into an arrangement to employ any
6 person through the medium or service of an employment agent.
- 7 4. "Employment agent" or "employment agency" means any person, ~~firm, corporation,~~
8 ~~limited liability company, or association~~ in this state engaged for hire or
9 compensation in the business of furnishing:
- 10 a. Persons seeking employment or changing employment, with information or
11 other service enabling or tending to enable such persons to procure
12 employment, by or with employers, other than such employment agent; or
13 b. Any other person, ~~firm, corporation, limited liability company, or association~~
14 who may be seeking to employ or may be in the market for help of any kind,
15 with information enabling or tending to enable such other person, firm,
16 corporation, limited liability company, or association to procure such help.
- 17 The term "employment agent" or "employment agency" does not include any
18 person, ~~firm, corporation, limited liability company, or association~~ employing
19 individuals to render part-time or temporary services to or for a third person, if the
20 person, ~~firm, corporation, limited liability company, or association~~ employing the
21 individuals, in addition to wages or salaries, pays social security and
22 unemployment insurance taxes, provides workers' compensation coverage, and is
23 responsible for the acts of the employees while rendering services to or for a third
24 person.
- 25 5. "Gross misconduct" means misconduct involving assault and battery, the malicious
26 destruction of property, or the theft of money or property.

27 **SECTION 66. AMENDMENT.** Section 34-13-02 of the 1999 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **34-13-02. License required - Penalty.** A person may not open or carry on an
30 employment agency if that person has a physical presence or location within the state, unless

1 that person first procures a license from the ~~commissioner~~ director. A person opening or
2 conducting any such agency without first procuring a license is guilty of a class B misdemeanor.

3 **SECTION 67. AMENDMENT.** Section 34-13-03 of the 1999 Supplement to the North
4 Dakota Century Code is amended and reenacted as follows:

5 **34-13-03. License application - Schedule of fees - License issuance and**
6 **revocation.** Annually, every applicant for a license shall file with the ~~commissioner~~ director a
7 written application stating the name and address of the applicant, the street and number of the
8 building in which the employment agency is to be maintained, the name of the person who is to
9 have the general management of the office, the name under which the business of the office is
10 to be carried on, whether or not the applicant is pecuniarily interested in any other business of a
11 like nature, and if so, where. Such application must also state whether the applicant is the only
12 person pecuniarily interested in the business to be carried on under the license and must be
13 signed by the applicant and sworn to before a notary public. If the applicant is a corporation,
14 the application must state the names and addresses of the officers and directors of the
15 corporation and must be signed and sworn to by the president and treasurer thereof. If the
16 applicant is a limited liability company, the application must state the names and addresses of
17 the managers and governors of the limited liability company and must be signed and sworn to
18 by the president and treasurer thereof. If the applicant is a partnership, the application must
19 also state the names and addresses of all partners therein and must be signed and sworn to by
20 all of them. The application must also state whether or not the applicant is, at the time of
21 making application, or has at any previous time been, engaged or interested in, or employed by
22 anyone engaged in, the business of conducting an employment agency, either in this state or
23 any other, and if so, when and where. The application must also give as reference the names
24 and addresses of at least three persons of reputed business or professional integrity, located
25 within the state. Every applicant for a license to engage in the business of an employment
26 agent shall, at the time of making application for said license, file with the ~~commissioner~~
27 director a schedule of the fees or charges to be collected by such employment agent for any
28 services rendered, together with all rules and regulations that may in any way affect the fees
29 charged or to be charged for any service. Such fees and such rules or regulations may
30 thereafter be changed by filing an amended or supplemental schedule showing such charges,
31 with the ~~commissioner~~ director. It is unlawful for any employment agent to charge, demand,

1 collect, or receive a greater compensation for any service performed by the agent than is
2 specified in such schedule filed with the ~~commissioner~~ director.

3 The ~~commissioner~~ director may issue a license to an employment agent and refuse to
4 issue a license if, after due investigation, the ~~commissioner~~ director finds that the character of
5 the applicant makes the applicant unfit to be an employment agent, or when the premises for
6 conducting the business of an employment agent are found to be unfit. The ~~commissioner~~
7 director may revoke a license upon due notice to the holder of the license and upon due cause.
8 Failure to comply with the duties, terms, conditions, or provisions of this chapter, or any lawful
9 orders of the ~~commissioner~~ director is due cause to revoke a license.

10 **SECTION 68. AMENDMENT.** Section 34-13-04 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **34-13-04. License term and fee.** All such licenses must be issued for a period of one
13 year only, and the annual fees must be paid to the ~~commissioner~~ director who shall promptly
14 deliver them to the state treasurer, who shall deposit all such moneys in the general fund. The
15 annual fee for such a license is two hundred dollars.

16 **SECTION 69. AMENDMENT.** Section 34-13-05 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **34-13-05. Applicant to furnish bond.** Every application for a license must be
19 accompanied by a bond in the penal sum of five thousand dollars, with one or more sureties or
20 a duly authorized surety company, to be approved by the ~~commissioner~~ director and filed in ~~his~~
21 the director's office, conditioned that the agent will conform to and not violate any of the terms
22 or requirements of this chapter or violate the covenants of any contract made by such agent in
23 the conduct of said business. Action on this bond may be brought by and prosecuted in the
24 name of any person damaged by any breach or any condition thereof, and successive actions
25 may be maintained thereon.

26 **SECTION 70. AMENDMENT.** Section 34-13-07 of the 1999 Supplement to the North
27 Dakota Century Code is amended and reenacted as follows:

28 **34-13-07. Duration of license.** Every license, unless previously revoked, remains in
29 force until one year after its issue, and every employment agent shall, upon payment of the
30 amount of the license fee required and the filing of a new bond or an authenticated certificate
31 continuing a bond previously approved by the ~~commissioner~~ director, have issued to it a license

1 for the ensuing year, unless the ~~commissioner~~ director refuses to do so for any of the reasons
2 stated in this chapter.

3 **SECTION 71. AMENDMENT.** Section 34-13-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **34-13-08. Suspension or revocation of license.** If the ~~commissioner~~ director finds
6 that the employment agent has violated any of the provisions of this chapter, or has acted
7 dishonestly in connection with ~~his~~ the agent's business, or has improperly conducted ~~his~~ the
8 agent's business, or that any other good and sufficient reason exists within the meaning and
9 purpose of this chapter, the ~~commissioner~~ director may suspend or revoke ~~his~~ the agent's
10 license, or refuse to grant a new license to the employment agent upon the termination thereof;
11 but in any case no such action may be taken until a written notice has been sent to the
12 employment agent specifying the charges against ~~him~~ the agent and ~~he~~ the agent has been
13 given a hearing, if ~~he~~ the agent requests, and a reasonable opportunity to disprove or explain
14 the charges.

15 **SECTION 72. AMENDMENT.** Section 34-13-09 of the 1999 Supplement to the North
16 Dakota Century Code is amended and reenacted as follows:

17 **34-13-09. Transfer of license - Consent to others becoming connected with**
18 **licensee.** No license granted under the terms of this chapter is transferable, except with the
19 consent of the ~~commissioner~~ director. No employment agent may permit any person not
20 mentioned in the license to become connected with the business as a partner, as an active
21 officer of a licensed corporation, or as an active manager of a licensed limited liability company
22 unless the consent of the ~~commissioner~~ director is first obtained. Such consent may be
23 withheld for any reason for which an original application for a license might have been rejected,
24 if the person in question had been mentioned therein. If such consent is given, the names of
25 the persons so becoming connected with the employment agency must be endorsed upon the
26 license and, if such license is renewed, must be substituted for or added to the names of the
27 persons originally mentioned therein.

28 **SECTION 73. AMENDMENT.** Section 34-13-10 of the North Dakota Century Code is
29 amended and reenacted as follows:

30 **34-13-10. Place of business.** No employment agent may open, conduct, or maintain
31 an employment agency at any other place than that specified in the license without first

obtaining the consent of the ~~commissioner~~ director. Such consent may be withheld for any reason for which an original application might have been rejected, if such place had been mentioned therein. If such consent is given, it must be endorsed upon the license and, if such license is renewed, such other place must be substituted for the place originally named in the license. So long as any employment agent continues to act as such under ~~his~~ the license, ~~he~~ the agent shall maintain and keep open an office or place of business at the place specified in the license.

SECTION 74. AMENDMENT. Section 34-13-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-13-12. Schedule of charges posted and printed on receipts - Sections of law posted - Information given to applicant for employment. Every employment agent possessing a valid license shall post in a conspicuous place in a room used for business purposes in the employment office and which is open to the public, a schedule showing the amount of the service charges to be made to either employees, employers, or both. The amount collected may not exceed the schedule of charges indicated.

A licensed employment agent shall post in a conspicuous place in a room used for business purposes in the employment office a copy of sections 34-13-12 and 34-13-15, provided by the ~~commissioner~~ director.

No employment agent holding a license may direct any applicant to apply for employment at any place outside of the office of such employment agent without first giving to such applicant, in written form, the name and address of the employment agent, the name of the applicant, the name and address of the person to whom the applicant is referred, and the kind of employment supposed to be obtainable at such place. Nothing herein may be construed to prohibit an employment agent from directing an applicant by telephone to apply for employment, but such telephone message must be confirmed in writing by the employment agent within twenty-four hours after the telephone conversation, and a carbon copy of such confirmation must be kept on file at the place of business of the employment agent for a period of one year.

SECTION 75. AMENDMENT. Section 34-13-13.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

**34-13-13.1. Service charge refund - Contracts and fees approved by
~~commissioner~~ director - Cause of action by employee.**

1. If an employment position terminates or the employee is fired or laid off before the end of ninety calendar days, the employee shall receive a refund of all service charges paid in excess of twenty percent of the gross wages actually received prior to termination or release. If the employee has a signed contract accepting an employment position but does not start employment, quits the job voluntarily, or is terminated for gross misconduct, the refund does not apply. Nothing contained in this section restricts an agency from receiving full-service charges at the time of the referral, subject to the refund herein provided.
2. This section applies to all licensees. Every licensee shall submit copies of all contracts and fee schedules used by such agency or agent to the ~~commissioner of labor~~ director for approval. No contract or fee between a licensee and an employer or an employee is valid without the ~~commissioner's~~ director's approval. In approving or disapproving such contracts and fees, the ~~commissioner~~ director shall issue a written determination. This determination is subject to review and appeal under chapter 28-32.
3. This section does not apply to contracts wherein the service charge does not exceed one hundred dollars.
4. Any employee who is damaged by a violation of this section is entitled to receive from the licensee the entire amount of service charges the employee has paid the licensee.

SECTION 76. AMENDMENT. Section 34-13-15 of the North Dakota Century Code is amended and reenacted as follows:

34-13-15. Employment agent requirements. In addition to the foregoing sections governing specific classifications, the following shall govern each and every employment agent:

1. Every license, of whatever classification, must be hung in a conspicuous place in the main office of the employment agency.
2. No fee may be solicited or accepted as an application or registration fee by any employment agent for the purpose of being registered as an applicant for employment.

- 1 3. Every employment agent shall give to every person from whom the payment of a
2 service charge is received for services rendered or to be rendered, or assistance
3 given or to be given, a receipt bearing the name and address of the employment
4 agency, the name of the employment agent, the amount of the payment, the date
5 of the payment and for what it is paid. Every receipt to an applicant by an
6 employment agent must be numbered and bound in duplicate form. A duplicate
7 copy of each receipt must be kept at least one year.
- 8 4. Every employment agent shall keep a record of all services rendered employers
9 and employees. This record must contain the name and address of the employer
10 by whom the services were solicited, the name and address of the employee, kind
11 of position offered by the employer, kind of position accepted by the employee,
12 probable duration of the employment, rate of wage or salary to be paid the
13 employee, amount of the employment agent's service charge, dates and amounts
14 of payments, date and amount of refund, if any, and for what, and a space for
15 remarks under which must be recorded anything of an individual nature to amplify
16 the foregoing report and as information in the event of any question arising
17 concerning the transaction. Such records must during business hours be open to
18 the inspection of the ~~commissioner~~ director at the address where the employment
19 agency is conducted for the purpose of satisfying the ~~commissioner~~ director that
20 they are being kept in conformity with this section. Upon written complaint being
21 made, the ~~commissioner~~ director may require of the employment agent against
22 whom the complaint is made a detailed account under oath in writing of the
23 transaction referred to in the complaint. If the ~~commissioner~~ director has reason to
24 question the detailed report so submitted by the employment agent, the
25 ~~commissioner~~ director may demand of the employment agent the production of
26 these records for examination by the ~~commissioner~~ director, or the ~~commissioner's~~
27 director's agent, at such place as the ~~commissioner~~ director may designate.
- 28 5. No employment agent may send out any applicant for employment without having
29 obtained, either orally or in writing, a bona fide order, and if no employment of the
30 kind applied for existed at the place to which the applicant was directed, the
31 employment agent shall refund to the applicant, within forty-eight hours of demand,

any sums paid by the applicant for transportation in going to and returning from the place, and all fees paid by the applicant. This chapter does not prevent an employment agent from directing an applicant to an employer where the employer has previously requested that ~~he~~ the employer be accorded interviews with applicants of certain types and qualifications, even though no actual vacancy existed in the employer's organization at the time the applicant was so directed; nor does it prevent the employment agent from attempting to sell the services of an applicant to the employer even though no order has been placed with the employment agent; provided, that in any case the applicant is acquainted with the facts when directed to the employer, in which event no employment agent is liable to any applicant as provided in this section.

6. No employment agent may, personally, or by an agent or agents, solicit, persuade, or induce any employee to leave any employment in which the employment agent or ~~his~~ the employment agent's agents has placed the employee. Nor may any agent, personally or through any agents, persuade or induce or solicit any employer to discharge any employee.

7. No employment agent may knowingly cause to be printed or published a false or fraudulent notice or advertisement for help or for obtaining work or employment.

8. No employment agent may place or assist in placing any person in unlawful employment.

9. No employment agent may fail to state in any advertisement, proposal, or contract for employment, that there is a strike or lockout at the place of proposed employment, if the agent has knowledge that such condition exists.

10. Any person who splits, divides, or shares, directly or indirectly, any fee, charge, or compensation received from any employee with any employer, or person in any way connected with the business thereof, is guilty of a class A misdemeanor.

SECTION 77. AMENDMENT. Section 34-14-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

34-14-05. Enforcement. It is the duty of the ~~commissioner~~ director of the department of commerce division of labor or the ~~commissioner's~~ director's deputy to ensure compliance with the provisions of this chapter, to investigate as to any violations of this chapter, and to

1 institute or cause to be instituted actions for penalties and forfeitures provided hereunder. The
2 ~~commissioner~~ director or the ~~commissioner's~~ director's deputy may hold hearings on the merits
3 of any claim, and shall cooperate with any employee in the enforcement of a claim against the
4 employee's employer in any case whenever, in the ~~commissioner's~~ director's opinion, the claim
5 is valid. The ~~commissioner~~ director may consider any offsets, deductions, or counterclaims
6 asserted by an employer during the ~~commissioner's~~ director's investigation and determination
7 of the validity, enforceability, and amount of any claim for wages. An employer must disclose
8 the basis for and the amount of any claimed offset, deduction, or counterclaim to the
9 ~~commissioner~~ director within the time the ~~commissioner~~ director directs. The ~~commissioner~~
10 director and the ~~commissioner's~~ director's authorized representatives have the right to enter
11 places of employment for the purpose of inspecting records and seeing that all provisions of this
12 chapter are complied with.

13 **SECTION 78. AMENDMENT.** Section 34-14-06 of the North Dakota Century Code is
14 amended and reenacted as follows:

15 **34-14-06. Personnel.** The ~~commissioner~~ director of the department of commerce
16 division of labor and ~~his~~ the director's deputy may employ such clerical and other assistants as
17 may be necessary to carry out the purposes of this chapter, and shall fix the compensation of
18 such employees and may also, to carry out such purposes, incur reasonable traveling expenses
19 for the said ~~commissioner~~ director, ~~his~~ deputy, and assistants.

20 **SECTION 79. AMENDMENT.** Section 34-14-07.1 of the 1999 Supplement to the North
21 Dakota Century Code is amended and reenacted as follows:

22 **34-14-07.1. Retroactive payment not required.** When the ~~commissioner~~ director of
23 the department of commerce division of labor reviews a potential employment relationship
24 involving an independent contractor who has a valid identification number issued under section
25 34-05-01.4 and determines that the party described as an independent contractor is an
26 employee for purposes of wages, rather than an independent contractor, the ~~commissioner~~
27 director may not require the party determined to be the employer to pay wages, in addition to
28 those required by the contract, for that employee, or any interest, penalty, or delinquency fee
29 with respect to those wages, retroactive to the date the relationship with the employee began,
30 unless, however, the ~~commissioner~~ director determines that the employer willfully and
31 intentionally entered the relationship with the purpose of avoiding the payment of wages. The

1 ~~commissioner~~ director may require the payment of wages for that employee as of the date the
2 order declaring an employment relationship becomes final.

3 **SECTION 80. AMENDMENT.** Section 34-14-08 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **34-14-08. Assignment of wage claims to ~~commissioner~~ director of department of**
6 **commerce division of labor for recovery by civil action.** The ~~commissioner~~ director of the
7 department of commerce division of labor or ~~his deputy has the power and authority to the~~
8 ~~director's deputy~~ may take assignments of wage claims and claims for relief for penalties
9 provided by section 34-14-09, without being bound by any of the technical rules with reference
10 to the validity of such assignments; and has the power and authority to prosecute actions for
11 the collection of such claims on behalf of persons who, in the judgment of the ~~commissioner~~
12 ~~director~~ or ~~his the director's~~ deputy, are entitled to the services of the ~~commissioner~~ director or
13 ~~his director's~~ deputy and who, in ~~his the director's or deputy's~~ judgment, have claims which are
14 valid and enforceable in the courts. The ~~commissioner~~ director or ~~his the director's~~ deputy ~~has~~
15 ~~the power to~~ may join various claimants in one preferred claim or lien, and in case of suit to join
16 them in one claim for relief.

17 **SECTION 81. AMENDMENT.** Section 34-14-09 of the 1999 Supplement to the North
18 Dakota Century Code is amended and reenacted as follows:

19 **34-14-09. Employees' remedies.** Whenever the ~~commissioner~~ director of the
20 department of commerce division of labor determines that wages have not been paid and that
21 such unpaid wages constitute an enforceable claim, the ~~commissioner~~ director, upon the
22 request of the employee, may take an assignment in trust for such wages or any claim for
23 liquidated damages in amounts the ~~commissioner~~ director deems valid and enforceable without
24 being bound by any of the technical rules respecting the validity of any such assignments and
25 may bring any legal action necessary to collect such claim. With the consent of the assigning
26 employee at the time of the assignment, the ~~commissioner~~ director has the power to settle and
27 adjust any such claim to the same extent as might the assigning employee.

28 **SECTION 82. AMENDMENT.** Section 34-14-10 of the North Dakota Century Code is
29 amended and reenacted as follows:

1 **34-14-10. Rules and regulations.** The commissioner of ~~labor is authorized to~~
2 commerce ~~may~~ issue such rules and regulations as necessary for the purpose of carrying out
3 the provisions of this chapter.

4 **SECTION 83. AMENDMENT.** Section 34-14-11 of the 1999 Supplement to the North
5 Dakota Century Code is amended and reenacted as follows:

6 **34-14-11. Reciprocal agreements for collection of wages.** The ~~commissioner~~
7 director of the department of commerce division of labor may enter into reciprocal agreements
8 with the labor department or corresponding agency of any other state, nation, or country or with
9 the person, board, officer, or commission authorized to act for and on behalf of the department
10 or agency, for the collection in the other state, nation, or country of claims or judgments for
11 wages and other demands based upon claims previously assigned to the ~~department~~ division
12 of labor.

13 **SECTION 84. AMENDMENT.** Section 40-57.1-04 of the 1999 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **40-57.1-04. Exemption from income tax - Notice to competitors - Limitations.**
16 Upon application by a project operator to the state board of equalization, the net income of a
17 project may be exempt from state income tax for a period not exceeding five years from
18 commencement of project operations. The application for the exemption must be reviewed as
19 to the eligibility of the project by the department of commerce division of economic development
20 and finance and its recommendations forwarded to the state board of equalization. The project
21 operator shall provide notice to competitors in the manner prescribed by the state board of
22 equalization. The board shall determine whether the granting of the exemption is in the best
23 interest of the people of North Dakota and, if it so determines, approve the exemption. The
24 board shall, after making its determination, certify the findings back to the applicant and to the
25 tax commissioner. Nothing contained herein shall have the effect of exempting the project from
26 filing an annual income tax return.

27 **SECTION 85. AMENDMENT.** Section 43-07-21 of the 1999 Supplement to the North
28 Dakota Century Code is amended and reenacted as follows:

29 **43-07-21. Penalty - Injunction proceedings.** Any person violating any provisions of
30 section 43-07-20 is guilty of a class B misdemeanor. A repeated violation constitutes legal
31 grounds for a court, on proper application by the ~~commissioner~~ director of the department of

1 commerce division of labor, to grant an injunction without requiring the posting of a bond or
2 undertaking.

3 **SECTION 86. AMENDMENT.** Section 43-07-22 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-07-22. Enforcement responsibility.** The ~~commissioner~~ director of the department
6 of commerce division of labor has the primary responsibility of enforcing sections 43-07-20 and
7 43-07-21 and may make reciprocal agreements or arrangements with any other state or
8 territory exempting the application of sections 43-07-20 through 43-07-22, and may examine
9 records of employment relative to public contracts for such purposes. However, any person
10 being adversely affected because of noncompliance with section 43-07-20 may also institute an
11 appropriate civil action, and any person having knowledge of a violation may file a criminal
12 complaint with the proper official.

13 **SECTION 87. AMENDMENT.** Section 44-03-01 of the 1999 Supplement to the North
14 Dakota Century Code is amended and reenacted as follows:

15 **44-03-01. Deputies may be appointed by certain officers.** The secretary of state,
16 state auditor, state treasurer, insurance commissioner, agriculture commissioner, ~~commissioner~~
17 director of the department of commerce division of labor, district assessor, and city assessor
18 each may appoint a deputy. The appointment must be in writing and is revocable in writing at
19 the pleasure of the principal, and the appointment and revocation must be filed as the oath of
20 the principal is filed.

21 **SECTION 88. AMENDMENT.** Section 49-10.1-17 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **49-10.1-17. Agreements to restore Amtrak service.** The governor or the director of
24 the department of transportation may make agreements in accordance with applicable federal
25 law with the state of Montana and relevant federal agencies for the renewal of service on the
26 Amtrak north coast Hiawatha route from Fargo to Spokane, Washington. The governor, the
27 director of the department of transportation, or the director of the department of ~~economic~~
28 ~~development and finance~~ commerce may enter agreements with any political subdivision, state,
29 and federal agency for the restoration of daily service on the Amtrak empire builder route.

30 **SECTION 89. AMENDMENT.** Subsection 4 of section 50-06-01.8 of the North Dakota
31 Century Code is amended and reenacted as follows:

- 1 4. The department of ~~economic development and finance~~ commerce, job service
2 North Dakota, county social service boards, and any other state agency
3 determined appropriate shall cooperate with the department to ensure the success
4 of the program. Local government agencies are encouraged to cooperate with the
5 department.

6 **SECTION 90. AMENDMENT.** Section 52-01-03 of the North Dakota Century Code is
7 amended and reenacted as follows:

8 **52-01-03. Disclosure of information.** Except as otherwise provided in this section,
9 information obtained from any employing unit or individual pursuant to the administration of the
10 North Dakota Unemployment Compensation Law and determinations as to the benefit rights of
11 any individual must be held confidential and may not be disclosed or be open to public
12 inspection in any manner revealing the individual's or employing unit's identity. Any claimant or
13 claimant's legal representative must be supplied with information from the records of the job
14 insurance division, to the extent necessary for the proper presentation of the claimant's claim in
15 any proceeding under the North Dakota Unemployment Compensation Law with respect to the
16 claim. Subject to restrictions as the bureau by rule may prescribe, the information may be
17 made available to any agency of this or any other state, or any federal agency, charged with the
18 administration of any unemployment compensation law or the maintenance of a system of
19 public employment offices, or the bureau of internal revenue of the United States department of
20 the treasury, and information obtained in connection with the administration of the employment
21 service may be made available to persons or agencies for purposes appropriate to the
22 operation of a public employment service. Upon a request, the bureau shall furnish to any
23 agency of the United States charged with the administration of public works or assistance
24 through public employment, and may furnish to any state agency similarly charged, the name,
25 address, ordinary occupation, and employment status of each recipient of benefits and the
26 recipient's rights to further benefits under the North Dakota Unemployment Compensation Law.
27 The bureau may request the comptroller of the currency of the United States to cause an
28 examination of the correctness of any return or report of any national banking association,
29 rendered pursuant to the North Dakota Unemployment Compensation Law, and in connection
30 with the request, may transmit any report or return to the comptroller of the currency of the
31 United States as provided in subsection c of section 3305 of the federal Internal Revenue Code.

1 The bureau shall request and exchange information for purposes of income and eligibility
2 verification to meet the requirements of section 1137 of the Social Security Act.

3 The bureau may provide the workers compensation bureau, ~~the state commissioner of~~
4 ~~labor,~~ the department of ~~economic development and finance~~ commerce, the state tax
5 commissioner, and the North Dakota occupational information coordinating committee with
6 information obtained pursuant to the administration of the North Dakota Unemployment
7 Compensation Law. Any information so provided may be used only for the purpose of
8 administering the duties of the workers compensation bureau, ~~the state commissioner of labor,~~
9 the state department of ~~economic development and finance~~ commerce, the state tax
10 commissioner, and the North Dakota occupational information coordinating committee. The
11 bureau may provide any state agency or a private entity with the names and addresses of
12 employing units for the purpose of jointly publishing or distributing publications or other
13 information as provided in section 54-06-04.3. Any information so provided may only be used
14 for the purpose of jointly publishing or distributing publications or other information as provided
15 in section 54-06-04.3.

16 Whenever the bureau obtains information on the activities of a contractor doing
17 business in this state of which officials of the secretary of state, workers compensation bureau,
18 or the tax commissioner may be unaware and that may be relevant to duties of those officials,
19 the bureau shall provide any relevant information to those officials for the purpose of
20 administering their duties.

21 The bureau shall request and exchange information as required of the bureau under
22 federal law with any specified governmental agencies. Any information so provided may be
23 used only for the purpose of administering the duties of such governmental agencies.

24 **SECTION 91. AMENDMENT.** Subsection 5 of section 52-02.1-01 of the North Dakota
25 Century Code is amended and reenacted as follows:

26 5. "Department" means the department of ~~economic development and finance~~
27 commerce.

28 **SECTION 92. AMENDMENT.** Section 54-01.1-08 of the 1999 Supplement to the North
29 Dakota Century Code is amended and reenacted as follows:

30 **54-01.1-08. Adoption of rules and regulations.** State agencies may consult with the
31 department of commerce division of community services to establish regulations and

procedures for implementation of the provisions of this chapter and to establish such regulations and procedures necessary to assure:

1. That the payments and assistance authorized by this chapter shall be administered in a manner which is fair and reasonable, and as uniform as practicable;
2. That a displaced person who makes proper application for a payment authorized by this chapter shall be paid promptly after a move or, in hardship cases, be paid in advance; and
3. That any displaced person aggrieved by a determination as to eligibility for a payment, or as to the amount of a payment, may have the application reviewed by the head or governing body of the state agency.

SECTION 93. AMENDMENT. Subsection 1 of section 54-06-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. The following executive and administrative officers and departments shall submit to the governor and the secretary of state reports covering their operations for the two preceding fiscal years, except as otherwise provided by law, not later than the first day of December each year after the regular session of the legislative assembly:
 - a. Secretary of state.
 - b. State auditor.
 - c. Insurance commissioner.
 - d. Attorney general.
 - e. Agriculture commissioner.
 - f. Superintendent of public instruction.
 - g. State tax commissioner.
 - h. Public service commission.
 - i. Department of corrections and rehabilitation.
 - j. Department of transportation.
 - k. State department of health.
 - l. Department of human services.
 - m. Workers compensation bureau.
 - n. Office of management and budget.
 - o. State treasurer.

p. Commissioner of ~~labor~~ commerce.

q. Department of banking and financial institutions.

r. ~~Department of economic development and finance.~~

s. Game and fish department.

t. s. Industrial commission.

u. t. Job service North Dakota.

v. u. Board of university and school lands.

SECTION 94. AMENDMENT. Section 54-21.3-04.1 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-21.3-04.1. Accessibility standards. Notwithstanding section 54-21.3-04, every building or facility subject to the federal Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327] must conform to the accessibility standards of the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities as contained in the appendix to title 28, Code of Federal Regulations, part 36 [28 CFR 36]. State and political subdivision entities may not claim the exceptions to the requirement that elevators be installed in certain buildings as those exceptions are stated in exception 1 to section 4.1.3(5) and in section 4.1.6(1)(k)(i) in the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36. A structural change to an existing state or political subdivision building or facility is not required if another method is effective in achieving compliance with regulations adopted under Public Law 101-336. For public accommodations, an alternative to a structural change in existing buildings or facilities is permitted only after it has been documented, in accordance with regulations adopted under Public Law 101-336, that a particular structural change is not readily achievable. A state agency or the governing body of a political subdivision shall require from any person preparing plans and specifications for a building or facility subject to the Americans with Disabilities Act of 1990 [Pub. L. 101-336; 104 Stat. 327], a statement that the plans and specifications are, in the professional judgment of that person, in conformance with the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities found in the appendix to 28 CFR 36, subject to the exception stated in this section. A statement of conformance must be submitted to the department of commerce division of community services for recording.

SECTION 95. AMENDMENT. Section 54-34-12 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34-12. ~~Department~~ Division of economic development and finance to establish venture capital network - Duties and functions. The department of commerce division of economic development and finance may establish, from funds appropriated to or otherwise available to the department of commerce, the venture capital network as a clearinghouse for information on informal risk capital investment opportunities in the state. The ~~department~~ division of economic development may:

1. Enter into service contracts on a competitive bid basis with public and private agencies, institutions, organizations, and individuals for the purpose of establishing and operating the venture capital network.
2. Receive and approve contract proposals for the purpose of establishing the venture capital network.
3. Solicit the support and contributions of public and private agencies, organizations, institutions, and individuals.
4. Accept and administer contributions for the purpose of operating the venture capital network.
5. Advertise and promote the venture capital network.

SECTION 96. AMENDMENT. Section 54-34-15 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34-15. Private sponsor. The department of commerce division of economic development and finance may endeavor to locate a private sector sponsor or group of sponsors to assume administration of the venture capital network.

SECTION 97. AMENDMENT. Section 54-34.3-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-01. Department of commerce division of economic development and finance established - Mission. The ~~North Dakota~~ department of commerce division of economic development and finance is established to assume the functions, powers, and duties of the department of economic development ~~commission~~ and finance with respect to programs and other efforts intended to enhance the economic development of the state. The mission of the ~~department~~ division is to develop strategies and programs to:

1. Facilitate the growth, diversification, and expansion of existing enterprises and the attraction and creation of new wealth-generating enterprises in the state;
2. Promote economic diversification and innovation within the basic industries and economic sectors of this state, including strategies and programs designed to specialize and focus the state's economy on advanced agriculture and food processing, energy byproduct development, export services and tourism, and advanced manufacturing;
3. Promote increased productivity and value-added products, processes, and services in the state, and the export of those goods and services by North Dakota enterprises to the nation and to the world;
4. Maintain and revitalize economically depressed rural areas by working in close collaboration with local communities and by encouraging communities to enter into cooperative relationships for more efficient and effective education, health care, government service, and infrastructure maintenance;
5. Forge a supportive partnership with the Bank of North Dakota, the board of higher education and the state's institutions of higher education, regional planning councils, local development organizations and authorities, the Myron G. Nelson Fund, Incorporated, the state's nonprofit development corporations, and other appropriate private and public sector organizations in achieving the economic goals of the state; and
6. Identify those statutes, administrative rules, and policies that impede the attraction, creation, and expansion of businesses and job creation in this state.

SECTION 98. AMENDMENT. Section 54-34.3-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-02. Definitions. As used in ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter, unless the context or subject matter otherwise requires:

1. "Department" means the department of ~~economic development and finance~~ commerce.
2. "Director" means the director of the department of commerce division of economic development and finance.
3. "Division" means the department division of economic development and finance.

1 **SECTION 99. AMENDMENT.** Section 54-34.3-03 of the 1999 Supplement to the North
2 Dakota Century Code is amended and reenacted as follows:

3 **54-34.3-03. ~~Department~~ Division structure.** The ~~department~~ division consists of:

- 4 1. A ~~division~~ of finance office; and
- 5 2. Other ~~divisions~~ offices that the director organizes and establishes as necessary to
6 carry out most efficiently and effectively the mission and duties of the ~~department~~
7 division.

8 **SECTION 100. AMENDMENT.** Section 54-34.3-04 of the 1999 Supplement to the
9 North Dakota Century Code is amended and reenacted as follows:

10 **54-34.3-04. ~~Department director~~ Director - Appointment - Compensation - Duties.**

11 A director shall supervise and control the ~~department~~ division. The ~~governor~~ commissioner of
12 commerce shall appoint as director a person who is qualified by training, knowledge, and
13 experience that is necessary to ensure a high degree of professional competency in carrying
14 out the duties of the director as enumerated in this section. The director shall serve at the will
15 of the ~~governor~~ commissioner and shall receive a salary set by the ~~governor~~ commissioner
16 within the limits of legislative appropriations. The director shall:

- 17 1. Manage the internal operations of the ~~department~~ division and establish policies
18 that promote the orderly and efficient administration of the ~~department~~ division;
- 19 2. Appoint personnel as may be determined necessary to carry out ~~sections~~
20 ~~54-34.3-01 through 54-34.3-08 this chapter~~ and fix their compensation within the
21 limits of legislative appropriations;
- 22 3. Assume central responsibility to develop, implement, and coordinate within state
23 government a comprehensive program of economic development consistent with
24 the mission of the ~~department~~ division;
- 25 4. Coordinate that program of economic development with all other appropriate state
26 and local government departments, agencies, institutions, and organizations that
27 perform research, develop and administer programs, gather statistics, or perform
28 other functions relating to economic development, and those government entities
29 shall advise, cooperate, and provide reasonable assistance to the director in
30 carrying out ~~sections 54-34.3-01 through 54-34.3-08 this chapter~~;

- 1 5. Advise, and cooperate with, departments and agencies of the federal government
2 and of other states, private business and agricultural organizations and
3 associations, research institutions, and any individual or other private or public
4 entity, and call upon those entities or individuals for consultation and assistance in
5 their respective fields of endeavor or interest in order that the ~~department~~ division
6 and the state may benefit from up-to-date technical advice, information, and
7 assistance;
- 8 6. Cooperate with individuals and both public and private entities, including the state's
9 congressional delegation, in identifying and pursuing potential sources of funding
10 and to receive those funds to be expended for purposes consistent with ~~sections~~
11 ~~54-34.3-01 through 54-34.3-08~~ this chapter;
- 12 7. Have authority to enter into contracts upon terms and conditions as determined by
13 the director to be reasonable and to effectuate the purposes of ~~sections 54-34.3-01~~
14 ~~through 54-34.3-08~~ this chapter;
- 15 8. Report at least annually to an interim committee designated by the legislative
16 council on performance of all divisions of the ~~department~~ division of economic
17 development and finance. The report must include the amount of success and
18 satisfaction the ~~department~~ division of economic development and finance has in
19 meeting business-client, economic-developer, and community-client needs and
20 expectations. The report must also include a comparison of dollars spent to the
21 economic benefits created of all programs administered or supervised by the
22 director; and
- 23 9. Have authority to do any and all other things necessary and proper to carry out
24 ~~sections 54-34.3-01 through 54-34.3-08~~ this chapter.

25 **SECTION 101. AMENDMENT.** Section 54-34.3-05 of the 1999 Supplement to the
26 North Dakota Century Code is amended and reenacted as follows:

27 **54-34.3-05. Division office of finance - Deputy director.** The director shall appoint a
28 deputy director who shall administer the ~~division~~ office of finance. The deputy director shall
29 serve at the will of the director and receive a salary set by the director within the limits of
30 legislative appropriations. The purpose of the ~~division of finance~~ office is to identify and
31 coordinate sources of capital and financial assistance, including lending programs of the Bank

1 of North Dakota, and administer programs of financial assistance placed under the
2 administration of the ~~division~~ office, to business and industry, local governments, and other
3 entities and individuals in the state consistent with the mission of the ~~department~~ office. The
4 ~~division~~ office of finance shall:

- 5 1. Administer other programs of financial assistance assigned to it by law or
6 otherwise.
- 7 2. Perform such other duties as assigned to it by the director.

8 **SECTION 102. AMENDMENT.** Section 54-34.3-06 of the 1999 Supplement to the
9 North Dakota Century Code is amended and reenacted as follows:

10 **54-34.3-06. ~~Divisions~~ Division offices.** The director shall organize and establish
11 other ~~divisions~~ offices as necessary to carry out most efficiently and effectively the mission and
12 duties of the ~~department~~ division, except that the ~~department~~ division must contain:

- 13 1. ~~An office of~~ A North Dakota American Indian business development office to assist
14 North Dakota tribal and individual economic development representatives and
15 North Dakota American Indian entrepreneurs with access to state and federal
16 programs designed to assist them.
- 17 2. ~~An office of~~ A North Dakota women's business development office to develop and
18 administer the North Dakota women's business program, to establish and fund the
19 women's business leadership council, certify women-owned businesses for federal
20 or state contracting and to recruit, train, and assist women entrepreneurs to
21 develop and diversify their businesses. The office must have an administrator and
22 staff sufficient to implement ~~its~~ the office's programs.

23 **SECTION 103. AMENDMENT.** Section 54-34.3-08 of the 1999 Supplement to the
24 North Dakota Century Code is amended and reenacted as follows:

25 **54-34.3-08. Patents.** The ~~department~~ division of economic development and finance,
26 the North Dakota development fund, incorporated, and the North Dakota agricultural products
27 utilization commission may hold or assign for remuneration all or a portion of their interest in
28 patents or royalty rights acquired in the course of their operation and performance of duties as
29 provided by law.

30 **SECTION 104. AMENDMENT.** Section 54-34.3-10 of the 1999 Supplement to the
31 North Dakota Century Code is amended and reenacted as follows:

54-34.3-10. Commission on the status of women - Appointment - Expenses -

Duties. There is established a commission on the status of women. ~~The~~ This commission consists of five members. The governor shall appoint each member for a term of four years, staggered so that the term of at least one member expires July first of each year. A vacancy occurring other than by reason of the expiration of a term must be filled in the same manner as original appointments, except that the appointment may be made for only the remainder of the unexpired term. The members are entitled to be paid for mileage and actual expenses incurred in attending meetings and in performance of their official duties in amounts provided by law for other state officers and employees. ~~The~~ This commission shall coordinate activities and serve as a clearinghouse and an advisory group to the ~~department~~ division for information relating to economic development programs that focus on career development for women. ~~The~~ This commission shall prepare for and perform followup duties in connection with state, regional, and national conferences, encourage interest, participation, and cooperation with state departments, agencies, and other organizations in developing needed services, facilities, and opportunities, and provide consultant help to local organizations created for the purpose of coordinating activities for the economic and career development of women.

SECTION 105. AMENDMENT. Section 54-34.3-11 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.3-11. Mutual fund capital pool - Authorization. The ~~department~~ division of economic development and finance, in conjunction with the agricultural products utilization commission, may establish a mutual fund capital pool to attract farm and nonfarm investments in value-added processing projects.

SECTION 106. AMENDMENT. Section 54-34.4-01 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.4-01. ~~Tourism department~~ Division of tourism - Director.

1. The division of tourism ~~department~~ is established to foster and promote tourism to, and within, the state and the full development of the state's tourism resources, and to serve as a planning and coordinating agency for tourism-related programs of the state and the state's political subdivisions.

- 1 2. The ~~governor~~ commissioner of commerce shall appoint a director of the division of
2 tourism ~~department~~ who shall serve at the will of the ~~governor~~ commissioner. The
3 director shall supervise and control the division of tourism ~~department~~.

4 **SECTION 107. AMENDMENT.** Section 54-34.4-02 of the 1999 Supplement to the
5 North Dakota Century Code is amended and reenacted as follows:

6 **54-34.4-02. Duties of director.** The director of the department of commerce division
7 of tourism ~~department~~, within the limits of legislative appropriations, shall:

- 8 1. Implement the state's tourism policy;
- 9 2. Prepare and update annually a tourism master plan for the development of tourism
10 in the state which identifies the state's tourism resources, estimates the impact of
11 tourism on the state's economy, and proposes a five-year plan for activities of the
12 division;
- 13 3. Measure and forecast visitor volume, receipts, and related social and economic
14 impacts;
- 15 4. Work with the private sector and local, state, and federal agencies to develop the
16 state's tourism-related infrastructure, facilities, services, and attractions, including
17 the state's highways and parks;
- 18 5. Organize and coordinate programs designed to promote tourism to, and within, the
19 state through various means. Those means may include:
- 20 a. Display advertising in magazines and newspapers;
- 21 b. Advertising on radio and television or other advertising media;
- 22 c. Publishing pamphlets, brochures, and other graphic and pictorial materials;
- 23 and
- 24 d. Aiding and assisting representatives of the media to ensure greater coverage
25 of the state's visitor attractions;
- 26 6. Participate in travel shows;
- 27 7. Supervise and administer visitor information centers that receive funding from the
28 state;
- 29 8. Develop opportunities for professional and technical education and training in the
30 visitor industry;

9. Foster an understanding among the state's residents of the economic importance to the state of hospitality and tourism;
10. Cooperate with local, state, and federal agencies and organizations and the private sector for the promotion and development of tourism to, and within, the state;
11. Provide advice and technical assistance to local, public, and private tourism organizations in promoting and developing tourism; and
12. Monitor the policies and programs of state agencies that significantly affect the visitor industry, notify those agencies of the effects of their actions on travel to, and within the state, and if necessary recommend programs or policy changes to those agencies.

SECTION 108. AMENDMENT. Section 54-34.4-04 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-34.4-04. North Dakota motion picture development office - Advisory board.

The North Dakota motion picture development office is a part of the department of commerce division of tourism ~~department~~. The office shall promote North Dakota as a location for shooting films, television shows, documentaries, and commercials, and shall provide technical expertise to persons desiring to use the state as a filming location. The director of the division of tourism ~~department~~ shall appoint staff necessary to fulfill the functions and duties of the office and shall appoint an advisory board of no more than ten members to assist in advising the office and to provide technical expertise to offer prospective film companies seeking locations and advice. The board shall serve without compensation, except reimbursement for actual and necessary expenses at the same rate as allowed other state officers to be paid from funds available to the office within the limits of legislative appropriations.

SECTION 109. A new chapter to title 54 of the North Dakota Century Code is created and enacted as follows:

Definitions. In this chapter, unless the context or subject matter otherwise requires:

1. "Cabinet" means the North Dakota commerce cabinet.
2. "Commissioner" means the commissioner of commerce.
3. "Department" means the department of commerce.
4. "Foundation" means the North Dakota economic development foundation.

1 **Department of commerce - Divisions.** There is hereby created the North Dakota
2 department of commerce. All records, materials, supplies, and equipment used by the division
3 of community services, department of economic development and finance, department of labor,
4 and the department of tourism are hereby transferred to the department.

5 1. The department must consist of:

6 a. A division of community services;

7 b. A division of economic development and finance;

8 c. A division of labor;

9 d. A division of tourism;

10 e. A division of workforce development; and

11 f. Any division the commissioner deems necessary to carry out this chapter.

12 2. Each division director serves at the will of the commissioner and receives a salary
13 set by the commissioner within the limits of legislative appropriations.

14 **Commissioner of commerce - Duties.** With the advice and counsel of the North
15 Dakota development foundation, the governor shall appoint a commissioner to supervise,
16 control, and administer the department. The commissioner serves at the pleasure of the
17 governor and receives a salary set by the governor within the limits of legislative appropriations.
18 The commissioner:

19 1. Shall file an oath of office in the usual form before commencing to perform the
20 duties of the commissioner;

21 2. Shall serve as chairman of the cabinet;

22 3. Shall prepare the cabinet's coordinated economic development plan;

23 4. Shall appoint directors to administer each of the department divisions;

24 5. Shall appoint personnel as may be determined necessary to carry out the duties of
25 the department;

26 6. Shall manage the operations of the department and oversee each of the divisions;

27 7. Shall assume central responsibilities to develop, implement, and coordinate a
28 working network of commerce service providers;

29 8. Shall coordinate the department's services with commerce-related services of
30 other state agencies;

- 1 9. Shall advise and cooperate with departments and agencies of the federal
- 2 government and of other states; private businesses, agricultural organizations, and
- 3 associations; and research institutions; and with any individual or other private or
- 4 public entity;
- 5 10. May enter into contracts upon terms and conditions as determined by the
- 6 commissioner to be reasonable and to effectuate the purposes of this chapter;
- 7 11. Shall adopt rules necessary to carry out this chapter; and
- 8 12. May take any actions necessary and proper to carry out this chapter.

9 **North Dakota economic development foundation - Executive committee -**

10 **Purpose.** There is hereby created the North Dakota economic development foundation.

- 11 1. The foundation is comprised of a minimum of fifteen and a maximum of thirty
- 12 members appointed by the governor for two-year terms, except the governor shall
- 13 appoint approximately one-half of the initial foundation members to one-year terms
- 14 in order to initiate a cycle of staggered terms. Appointment of the foundation
- 15 members must ensure a cross section of business and economic development
- 16 representation.
- 17 2. The foundation members shall elect an executive committee with a minimum of five
- 18 and a maximum of nine foundation members. The executive committee members
- 19 shall elect a chairman, vice chairman, and a secretary.
- 20 3. The purpose of the foundation is to:
 - 21 a. Provide the governor advice and counsel in selecting the commissioner;
 - 22 b. Serve in an advisory role to the commissioner, including counsel in the
 - 23 development of the division of economic development and finance's strategic
 - 24 plan;
 - 25 c. Monitor economic development activities and initiatives of the department;
 - 26 d. Set accountability measurements for the department; and
 - 27 e. Raise and distribute private sector funds for use in commerce-related
 - 28 activities in the state.

29 **Compensation of foundation members.** A foundation member is entitled to receive
30 compensation in the amount of sixty-two dollars and fifty cents per day for days spent in
31 attendance at foundation meetings or other business as approved by the foundation. A

1 foundation member is entitled to reimbursement for mileage and expenses as provided for state
2 officers.

3 **Commerce cabinet.** There is hereby created the North Dakota commerce cabinet.
4 The cabinet is composed of the executive heads, or other authorized representatives, of each
5 state agency that receives state or federal economic development funds. The commissioner is
6 the chairman of the cabinet and shall determine which agencies are members of the cabinet.
7 The cabinet:

- 8 1. Shall coordinate and communicate economic development efforts of the agencies
9 represented.
- 10 2. Shall meet a minimum of four times and a maximum of twelve times each year.
- 11 3. Shall develop and make available before each regular session of the legislative
12 assembly a coordinated economic development plan that identifies economic
13 development moneys included in budget requests of cabinet agencies.

14 **Cooperation with other agencies or private entities to jointly publish or mail**
15 **publications.** The department may cooperate with other state agencies or with a private entity
16 for the purpose of jointly publishing or distributing information or publications as provided in
17 section 54-06-04.3.

18 **SECTION 110. AMENDMENT.** Subsection 15 of section 54-44.3-20 of the 1999
19 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 20 15. Officers and employees of the department of commerce division of economic
21 development and finance.

22 **SECTION 111. AMENDMENT.** Section 54-44.5-01 of the 1999 Supplement to the
23 North Dakota Century Code is amended and reenacted as follows:

24 **54-44.5-01. Definitions.** In this chapter, unless the context or subject matter otherwise
25 requires:

- 26 1. "Community action agency" means a not-for-profit corporation that has authority
27 under its charter and bylaws to receive funds to administer community action
28 programs and which was officially designated as a community action agency or a
29 community action program under section 210 of the Economic Opportunity Act of
30 1964 [Pub. L. 88-452; 78 Stat. 508; 42 U.S.C. 2701 et seq.], unless the community

1 action agency or a community action program lost its designation as a result of
2 failure to comply with the provisions of the federal act.

3 2. "Community action program" means a community-based and operated program
4 that includes an intake assessment and referral capability in each of its counties
5 and is designed to include a number of projects or components to provide a range
6 of services and activities having a measurable and potentially major impact on
7 causes and conditions of poverty in the community or those areas of the
8 community where poverty is a particularly acute problem. These services and
9 activities may include activities designed to provide opportunities for eligible
10 persons to:

- 11 a. Secure and retain meaningful employment;
- 12 b. Attain an adequate education;
- 13 c. Make better use of available income;
- 14 d. Obtain and maintain adequate housing and suitable living environment;
- 15 e. Obtain emergency assistance through grants and loans to meet immediate
16 and urgent individual and family needs, including the need for health services,
17 nutritious food, housing, and employment-related assistance;
- 18 f. Maximize the role community action agencies play in supportive mechanisms
19 available to North Dakota families;
- 20 g. Remove obstacles and solve problems that block achievement of
21 self-sufficiency;
- 22 h. Achieve greater participation in the affairs of the community; and
- 23 i. Make more effective use of other programs.

24 3. "Department" means the department of commerce.

25 4. "Director" means the director of the division ~~of community services~~.

26 4- 5. "Division" means the department division of community services.

27 **SECTION 112. AMENDMENT.** Section 54-44.5-02 of the 1999 Supplement to the
28 North Dakota Century Code is amended and reenacted as follows:

29 **54-44.5-02. Division of community services - Creation.** The division of community
30 services is established in the ~~office of management and budget~~ department to provide technical
31 assistance to local governments, state agencies, and the executive branch in the area of

community and rural planning and development, policy research and development, and grant program implementation. The ~~director of the office of management and budget~~ commissioner shall appoint a director of the division upon the basis of education and experience. The position of director is not a classified position and the director shall serve at the pleasure of the ~~director of the office of management and budget~~ commissioner. The director of the division may employ such other professional, technical, and clerical persons as may be necessary and may fix their compensation within the limits of legislative appropriation. All personnel within the division must be allowed their actual and necessary travel expenses at the same rate as for other employees of the state.

SECTION 113. AMENDMENT. Section 54-44.5-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-03. Powers and duties of the director. The director shall direct and supervise, with the approval of the ~~director of the office of management and budget~~ commissioner, all the administrative and technical activities of the division.

SECTION 114. AMENDMENT. Section 54-44.5-05 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-44.5-05. Continuing appropriation. There is hereby appropriated as a standing and continuing appropriation to the ~~division of community services~~ department for the purpose of carrying out the provisions of this chapter, including the administration of such provisions, all moneys returned as repayments of federal or other funds granted under the community development loan fund, and all earnings from the investment of such moneys, which may be received from time to time by the division. Administrative expenses may only be charged against such moneys to the extent permitted by federal law or regulations.

SECTION 115. AMENDMENT. Section 54-53-02 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

54-53-02. Advisory transportation council - Composition. There is hereby established a transportation council which shall serve in an advisory capacity to the upper great plains transportation institute. The director of the institute shall serve as the executive secretary of the council and it shall elect its own chairman. The council membership shall consist of one representative from and appointed by the following organizations:

1. The greater North Dakota association.

2. The public service commission.
3. The North Dakota farm bureau.
4. The North Dakota farmers union.
5. The livestock industry council.
6. The North Dakota wheat commission.
7. The North Dakota department of commerce division of economic development and finance.
8. The North Dakota farmers grain dealers association.
9. The North Dakota railway lines.
10. The North Dakota motor carriers association.
11. The North Dakota aeronautics commission.
12. A traffic counsel selected by the members of the council appointed by the above-named organizations.

Members of the council shall serve without pay, but they may receive reimbursement for actual and necessary expenses incurred in the performance of their duties, if authorized by the director.

The council shall consult with the institute in matters of policy affecting the administration of this chapter and in the development of transportation in the state of North Dakota. The council shall meet at the call of the executive director or upon the written request of three or more members of the council.

SECTION 116. AMENDMENT. Subsection 1 of section 54-57-03 of the 1999 Supplement to the North Dakota Century Code is amended and reenacted as follows:

1. Notwithstanding the authority granted in chapter 28-32 allowing agency heads or other persons to preside in an administrative proceeding, all hearings of administrative agencies under chapter 28-32, except hearings conducted by the public service commission, the industrial commission, the commissioner of insurance, the workers compensation bureau, the state engineer, the department of transportation, job service North Dakota, and the ~~commissioner~~ department of commerce division of labor, except investigatory hearings under section 28-32-08, and except rulemaking hearings held in accordance with section 28-32-02, must be conducted by the office of administrative hearings in accordance with the

administrative hearings provisions of chapter 28-32 and any rules adopted pursuant to chapter 28-32. But, appeals hearings pursuant to section 61-03-22 and drainage appeals from water resource boards to the state engineer pursuant to chapter 61-32 must be conducted by the office of administrative hearings. Additionally, hearings of the department of corrections and rehabilitation for the parole board in accordance with chapters 12-56.1 and 12-59, regarding parole violations; job discipline and dismissal appeals to the board of higher education; Individuals With Disabilities Education Act and section 504 due process hearings of the superintendent of public instruction; and chapter 37-19.1 veterans' preferences hearings for any agency must be conducted by the office of administrative hearings in accordance with applicable laws.

SECTION 117. AMENDMENT. Section 55-01-01 of the North Dakota Century Code is amended and reenacted as follows:

55-01-01. State historical board. There is a state historical society of North Dakota which is under the supervision and control of the state historical board. The board consists of seven members who are appointed by the governor. Each member appointed to the board must be a citizen and resident of the state of North Dakota. Appointments are for a term of three years from the first day of July to the thirtieth day of June of the third year or until a successor has been appointed and qualified. The governor shall appoint two members for terms commencing in 1996, two members for terms commencing in 1997, and three members for terms commencing in 1998. Vacancies occurring other than by the expiration of an appointive term must be filled by appointment for the remainder of the term only in the same manner as regular appointments. The board of directors shall select from its membership a president, vice president, and secretary to serve as officers of the board. The secretary of state, director of the parks and recreation department, director of the department of transportation, director of the department of commerce division of tourism department, and state treasurer are ex officio members of the board and shall take care that the interests of the state are protected. Each ex officio member may appoint a designee to attend meetings with full voting privileges.

SECTION 118. AMENDMENT. Section 55-06-01 of the North Dakota Century Code is amended and reenacted as follows:

1 **55-06-01. Yellowstone-Missouri-Fort Union commission.** There is a
2 Yellowstone-Missouri-Fort Union commission, hereinafter referred to as the "commission",
3 declared to be a governmental agency with the authority to exercise the powers specified
4 herein, or which may be reasonably implied, composed of the governor as chairman, the
5 president of the senate, the speaker of the house, the superintendent of the state historical
6 board, the ~~director~~ commissioner of the department of ~~economic development and finance~~
7 commerce, all ex officio, and five citizens of the state to be appointed by the governor who shall
8 serve without compensation for the purpose of investigating, in cooperation with the state of
9 Montana and the national park service, the historical importance and significance of the area
10 and for formulating and executing plans for the preservation of the historic sites illustrative of
11 the history of the United States. The commission may expend its operating expenses and other
12 funds provided by legislative appropriations, and public and private grants, for programs,
13 improvements, and facilities to preserve and improve the Yellowstone-Missouri confluence
14 area.

15 **SECTION 119. AMENDMENT.** Subsection 1 of section 57-38.5-01 of the North Dakota
16 Century Code is amended and reenacted as follows:

- 17 1. "Director" means the director of the department of commerce division of economic
18 development and finance.

19 **SECTION 120. AMENDMENT.** Section 57-38.5-08 of the North Dakota Century Code
20 is amended and reenacted as follows:

21 **57-38.5-08. Rules and administration.** The tax commissioner is charged with
22 administration of this chapter as it relates to an income tax credit and has the same powers as
23 provided under section 57-38-56 for purposes of this chapter. The director is charged with
24 administration of this chapter as it relates to certification of qualified businesses and the ~~director~~
25 commissioner of commerce may adopt rules for that purpose.

26 **SECTION 121. AMENDMENT.** Subsection 6 of section 57-39.2-28 of the North Dakota
27 Century Code is amended and reenacted as follows:

- 28 6. Notwithstanding section 57-39.2-23, the commissioner may provide names and
29 addresses of Canadian residents claiming a North Dakota sales tax refund to the
30 director of the department of commerce division of tourism ~~department~~.

1 **SECTION 122. AMENDMENT.** Section 65-04-15 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **65-04-15. Information in employer's reports confidential - Penalty if employee of**
4 **bureau divulges information.** The information contained in an employer's report is for the
5 exclusive use and information of the bureau in the discharge of its official duties and is not open
6 to the public nor usable in any court in any action or proceeding pending therein unless the
7 bureau is a party thereto. The information contained in an employer's report may be provided
8 to a federal or state law enforcement agency pursuant to a lawful order of a court upon a
9 showing of necessity and prior notice to the bureau of an application for the order. The
10 information contained in the report, however, may be tabulated and published by the bureau in
11 statistical form for the use and information of the state departments and of the public. Upon
12 request, the bureau shall disclose the rate classification of an employer to the requester;
13 however, the bureau may not disclose any information that would reveal the amount of payroll
14 upon which that employer's premium is being paid or the amount of premium the employer is
15 paying. Anyone who is convicted under section 12.1-13-01 is disqualified from holding any
16 office or employment with the bureau.

17 The bureau may, upon request of the state tax commissioner or the secretary of state,
18 furnish to them a list or lists of employers showing only the names, addresses, and bureau file
19 identification numbers of such employers as those files relate to this chapter; provided, that any
20 such list so furnished must be used by the tax commissioner or the secretary of state only for
21 the purpose of administering their duties. The bureau may provide the commissioner of ~~labor~~
22 commerce or job service North Dakota with information obtained pursuant to the administration
23 of this title. Any information so provided must be used only for the purpose of administering the
24 duties of the commissioner of ~~labor~~ commerce or job service North Dakota. Whenever the
25 bureau obtains information on activities of a contractor doing business in this state of which
26 officials of the secretary of state, job service North Dakota, or tax commissioner may be
27 unaware and that may be relevant to the duties of those officials, the bureau shall provide any
28 relevant information to those officials for the purpose of administering their duties. The bureau
29 may provide any state agency or a private entity with a list of names and addresses of
30 employers for the purpose of jointly publishing or distributing publications or other information
31 pursuant to section 54-06-04.3. Any information so provided may only be used for the purpose

1 of jointly publishing or distributing publications or other information as provided in section
2 54-06-04.3.

3 **SECTION 123. REPEAL.** Section 54-34.3-09 of the North Dakota Century Code is
4 repealed.

5 **SECTION 124. APPROPRIATION - TRANSFER.** As of the effective date of this Act,
6 the division of community services, department of economic development and finance,
7 department of labor, and tourism department are abolished and any funds appropriated to these
8 agencies by the fifty-sixth legislative assembly and fifty-seventh legislative assembly are
9 transferred to the department of commerce.

10 **SECTION 125. EFFECTIVE DATE.** This Act becomes effective on August 1, 2001.

NOTE: This bill draft provides the Governor shall appoint:

1. A Commissioner of Commerce, who:
 - a. Appoints directors for the following statutory divisions of the Department of Commerce:
 - (1) Division of Community Services;
 - (2) Division of Economic Development and Finance, the director of which appoints deputy directors for the following offices:
 - (a) Finance Office;
 - (b) North Dakota American Indian Business Development Office;
 - (c) North Dakota Women's Business Development Office; and
 - (d) Any other offices deemed necessary;
 - (3) Division of Labor, the director of which may appoint a Deputy Director;
 - (4) Division of Tourism, which must include the North Dakota Motion Picture Development Office;
 - (5) Division of Workforce Development; and
 - (6) Any additional divisions deemed necessary; and
 - b. Determines member agencies for the North Dakota Commerce Cabinet.
2. Members of North Dakota Development Foundation (15-30 members).